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ALUMINUM COMPANY OF AMERICA, ET AL.

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PROBLEM 14, 1909

### SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 204

### UNITED STATES, APPELLANT,

VS.

### ALUMINUM COMPANY OF AMERICA, ET AL.

### APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

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	15, 1956.	5161.	2015	-
. 05	126-Speech entitled, "Products" by G. E. Rol-			
	ston at 1956 Rome Cable Corporation			
. 2	Sales Conference	5162	2016	
8	127-Report submitted by H. T. Dyett to the			
	Board of Directors of Rome Cable Cor-			
	poration at their meeting on November 29,			
-	1956	5166	2023	
	128-Report submitted by H. T. Dyett to the			
•	Board of Directors of Rome Cable Cor-			_
1 - "	oporation at their meeting on March 7,	-		
1 4.	1957	5177	2034	
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129-Rome memorandum dated March 11, 1957		
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130-Rome memorandum dated March 29, 1957		
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132-Report submitted by II. T. Dyett to the		
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133-Speech by R. A. Schatzel at the 1958 Rome		•
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134-Rome memorandum from C. J. McMurry to		•
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Board, Knoxville, Tennessee", dated De-		
cember 5, 1958	5218	2074
eember 5, 1958		
C. J. McMurry, Subject: "Knoxville Utili-		
ties Board", dated December 10, 1958		2076
136—Letter from C. J. McMurry to Harry H.		2010
Hicks of the Tennessee Valley Authority,		
dated January 19, 1959 with note from	5000	0077
McMurry to J. R. Woods	· 5220	2077
137-Rome memorandum from J. R. Woods to		
R. R. Davis, Subject: "Iowa Power and		
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cember 24, 1958	5221	2078
138-Alcoa Electrical Conductor Division News-		
letter, dated May 11, 1955 with attached		2020
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139-Alcoa memorandum from P. T. Coffin to	1.	
J. P. Haight, Subject: "Polyethylene		
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. 1955	5230	2087
140-Alcoa memorandum from P. T. Coffin to		
R. V. Davies, Subject: "Covered Con-	1. =	
ductors-Proposal for Alcoa to do its own		
Polyethylene Covering", dated July 11,		
1955	5234	2090
141-Alcoa memorandum from P. T. Coffin to		
J. L. Patterson, Subject: "Covered Con-		
ductors", dated July 29, 1955	5237	2092
142-Alcoa memorandum from P. T. Coffin to		
R. V. Davies, Subject: "Rome Cable Cor-		-
poration", dated January 4, 1957	5240	2095

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. Pla	145—Alcoa memorandum from Earl B. Cox to			•
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	tor Sales Meetings", dated December 6,			
-	1956	5241	2096	
	146—Alcoa News Release dated February 27, 1957		2097 د	
			2031	٠.
	149—Minutes of Meeting of Alcoa Sub-Committee on Electrical Conductors, September 11-		6	
		5245	2099	
	12, 1957 150—Alcoa memorandum dated October 11, 1957		2000	
	from C. A. Appel to E. P. Burton, Sub-			
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	151—Alcoa memorandum dated November 22,		-12.	
	1957 from E. B. Cox to P. T. Coffin, Sub-	2.5		
	ject: "Electrical Conductor Sales Meet-			100
	ing", December 9, 10, 11, 1957		2129	1.5
	153—Alcoa memorandum dated August 21, 1958,		-1-0	-
	from T. L. Gilbert to P. T. Coffin, Subject:			
	"Facilities for Neoprene and Rubber"		2131	
	154—Minutes of Meeting of Alcoa Subcommittee		-101	
	on Electrical Conductors, September 10-11,			
	1958	5288	2132	
	155-Alcoa request for authorization Number			
	M-2520, dated November 14, 1958, with	-		
	covering memorandum dated July 27,	11		
	1959 from D. R. Little to O. R. Pellegrino		2164	
	156 Alcoa memorandum dated January 13, 1959,		,	
* 4.	by T. I. S. Boak, Jr., Subject: "Capital			
	Expenditure Committee Meeting Notes";			
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14	158 -Alcoa memorandum dated July 8, 1957 from			
	P. B. Coffin to R. V. Davies, Subject:			
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•	159-Alcoa memorandum dated July 11, 1957 from			
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	161-Alcoa memorandum dated August 14, 1957			
	from P. T. Coffin to W. K. Unverzagt			7
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	162-Alcoa memorandum dated August 16, 1957			
	from P. T. Coffin to F. L. Magee, Subject:		- 1	-1
	"Rome Cable Corporation"	5352	2185	
	163-Alcoa memorandum dated September 20		- January	
	1957 from T. H. Kerry to S. T. Gustina		*	*
. 1	Subject: "Rome Cable Corporation"		2187	-
4	164-Alcoa memorandum dated September 26		,	
	1957 from T. H. Kerry to S. T. Gustina			41
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165-Letter from H. T. Dyett to John L. Loeb of			3
Loeb, Rhoades and Company dated Octo-			
ber 2, 1957	5359	2190 .	
166-Alcoa memorandum dated October 14, 1957	6.		
from R. V. Davies ot F. L. Magee, with	1		
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167—Alcoa memorandum dated October 15, 1957			
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168-Alcoa memorandum dated October 3, 1958			
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169-Alcoa memorandum from F. L. Magree to			
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170-Alcoa memorandum from T. L. Gilbert and			
R. H. Knapp to E. D. Mairs; Subject:		*	
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lated Wire and Cable", dated November			
21, 1958.	5365°	2195	
171-Alcoa memorandum from T. L. Gilbert to	0000	2100	
N. B. Lane, Subject: "Covered Conductor-			
Overall Program", dated December 2, 1958	5367	2197	
172—Alcoa memorandum from T. L., Gilbert to		2101	
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173-Alcoa memorandum from T. L. Gilbert to	0010	2100	
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175 -Alcoa memorandum from T. L. Gilbert to			
E. D. Mairs, Subject: "Insulated Wire	590à	0000	
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178-Alcoa memorandum from P. T. Coffin to			
F. J. Close, Subject: "Insulated Conduc-	*****	0000	
tors", dated January 12, 1959	5382	2208	
179-Alcoa report by T. Allen Johnston entitled,			
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ductor", dated January 17, 1959	5383	2210	
180-Alcoa News release dated January 22, 1959	5395	2221	
181-Alcoa News release dated June 15, 1959	5398	2223	
183-Rome memorandum from C. J. McMurry to			
J. R. Woods, Subject: "Tennessee Valley			
Authority, Chattanooga, Tenressee", dated	1-1-1-1	- 6	-
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184 Rome memorandum from J. R. Woods to	Original	Frint	
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185-Alega Pologram Com I M II II	5402	2226	
185-Alcoa belegram from L. M. Hall to H. H.	. 1	•	-
Rodee, dated April 14, 1960	5403	2226	
186 Alcoa telegram from H. H. Rodee to L. M.	. 5		
Hall, dated April 14, 1960	5404	2227	
187-Rome memorandum from T. D. Bylin to			
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merford, L. D. Fitler, and F. P. Baumler,		1	1
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189—Alcoa memorandum from J. L. Healy, Alcoa			
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191—Alcoa memorandum from T. H. Kerry, Alcoa			
Accounting Department, Cost Division to			
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Cable and Redraw rod prices", dated Feb-			
ruary 20, 1956	5407	0021	
1922-Alcoa memorandum from W. B. Howard to	0301	2231	
. R. B. McKee, Subject: "Central Cable			
Company", dated August 26, 1957	5410	000-	
193-Aleos memorandum from L. P. Favorite to	5412	2235	
R. C. Erickson, Subject: "Central Cable			
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194—Alcoa memorandum from J. L. Healy to	0418	2241	
P. T. Coffin, Subject: "Spread in Schedule"		- WHITE THE PARTY NAMED IN	4
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Bare Cable', dated October 11, 1957 with			
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195—Alcoa memorandum from Robert P. Miller	5421	2243	
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Corporation, Jersey Shore, Pa.", dated			
January 25, 1955	5424	2247	
196—Alcoa memorandum from Robert P. Miller to			
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uary 27, 1955	5425	2248	
197-Alcoa memorandum from L. C. Fisher to			
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195—Letter from J. H. Dyett to R. Murray Wil-			
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	199-Alcoa memorandum from J. L. Healy to		
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	tor Cable and Redraw Rod Prices", dated		
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	200-Alcoa memorandum from R. C. Erickson to	5430	2252
	L. P. Favorite, Subject: "Central Cable		
•	Corporation", dated September 19, 1957	£401	ooin :
	201—Alcoa memorandum from Alfred R. Gneiser	5431	2253
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	October 15, 1959	5432	2254
,	202 Aleoa memorandum from David B. Miller to		-
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	Corporation, Jersey Shore, Pennsylvania",		
	dated October 20, 1959	5434	2256
	203-Alcoa memorandum from G. V. Craighead of		
	Alcoa to P. T. Coffin, Subject: "Westing-		
1 .	house Electric Corporation, Buffalo, New		
	York", dated February 7, 1957	5435	2257
	210-Alcoa memorandum from P. T. Coffin to		
	R. R. Cope, Subject: "Rea Magnet Wire		
	Company", dated February 20, 1958	5438 ·	2259
	221-Alcoa memorandum from R. R. Cope to		
	District Sales Office Managers, Subject:		
	"Alcoa Aluminum Magnet Wire", dated		
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	223-Alcoa memorandum from P. T. Coffin to		
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	net Wire", dated July 30, 1959	5443	2264
	224-Alcoa memorandum from F. L. Magee to		
	L. E. Hickman, Subject: "Rea Magnet	- P9 /	
	Wire Company, Inc.", dated January 8,		
*	1960	5447	2267
	225—Alcoa memorandum from L. E. Hickman to		* .
	Officers and salesmen, dated January 18,		1.
	1960 with attached letter from L. E. Hick-		
	man to Samuel A. Rea, Chairman of the	* '	
f	Board of Rea Magnet Wire Company,		
	dated January 15, 1960	5449	2268
	227-Letter from F. L. Magee to Philip Sporn,		
	President, American Electric Power Serv-	accordance and the	
	ice Corporation, dated January 28, 1960	5453	2272
*	228-Alcoa Commercial Research Division Report,		
- 1	Subject: "Fine Wire", dated September		
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-	230-Alcoa Commercial Research Division Report		
	entitled, "Long-Term Forecast of The		. 15
	Demand for Aluminum", dated November		
4		5463	2281
	20, 1957 (excerpts)	0.100	2201
	231-Alcoa memorandum from Richard W. Davis		
	to William W. Knapp, Subject: Product		
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- :	E. C. Wire-Cable Accessories", dated July		1
	11, 1960	5473	2293
	232-Alcoa document entitled, "Insulated Alumi-		
	num Power Cables", undated	5475	2294
	233 Alcoa document entitled, "Rome Cable Divi-		
	sion of Alcoa, Application for Consigned		1 .
	Stock Approval", undated	5487	2302
	234—Letter from T. O. English of Alcoa to A. D.	1 m p m n	2002
		5489	2304
	Ross Fraser, dated December 12, 1951	0400	2004
-	235—Alcon "Sound Slide Film for Electrical Dis-		17.5
	tributors", First Draft July 1, 1954, Re-		
	vised July 14, 1954	5491	2307
	236-Speech by G. E. Rolston at Rome Cable 1955		- 1
	· Sales Conference, Subject: "Copper or		1
	Aluminum"	5517	2333
	242-Speech by C. H. Ellis at Rome Cable 1958	9 '	
	Sales Conference, Subject: "Production		-
	Highlights and Lowlights"	5519	2335
	243—Rome memorandum from R. K. Davis to	001.	-50.00
	P. J. Lopushinsky, dated January 31, 1958		
	with attached letter to H. B. Heifzman,	1.	
	General Electric Supply Co., dated Jan-		
	uary 31, 1958	5524	2343
	245-Rome memorandum from J. R. Woods to		
/	C. J. McMurry, Subject: "Townsend		-
	Hardware Co., Jackson, Tennessee", dated		3.0
	April 8, 1958	5526	2345
. *	246-Rome memorandum from J. R. Woods to		
	File, Subject: "Aluminum Price Situa-	0 0 1 0	
	tion" detect April 24 1050	5527	2346
	tion", dated April 24, 1958	0021	2010
	248-Letter from A. D. R. Fraser to R. S. Keefer,		
	President, The Okonite Company, dated	11 (18)	11
	October 15, 1958	5530	2349
	249-Alcoa memorandum from L. T. Guess to		
	T. L. Gilbert, Fabricating Division, Mas-		
	sena Works, Subject: "Covered Conductor	*	
4	Forecast", dated November 24, 1958		2350
1	250-Alcoa memorandum from F. L. Magee to		
	P. T. Coffin, Subject: "Accurate Insulated		
	Wire Corporation", dated January 30,		
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-	1959	5534	2302

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251-Alcoa memorandum from Philip T. Coffin to		
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lated Wire Corporation", dated February		2353
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253-Alcoa memorandum from Philip T. Coffin to		•
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Company, Carnegie, Pennsylvania", dated	1	4
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254 Alcoa memorandum from Leon E. Hickman	n	
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257-Alcoa memorandum from C. L. Kessler	,	
Metallurgical Dept., Massena Fabricating	g ·	
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per-Coated Aluminum Wire", dated Jul	y	
8. 1959	5541	2358
258-Rome memorandum from D. H. Thayer to	0.	
All Salesman, Subject: "Aluminum Build		
ing Wire", dated December 8, 1959	5543	2359
259-Alcoa memorandum from H. J. Fahrney t	0	
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poration", dated September 10, 1959	5545	2361
261—Alcoa memorandum from Leon E. Hickma	n	
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Massachusetts", dated February 9, 1960	5546	2362
263 Alcoa Request and Authorization, date	d	
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April 15, 1960.  264—Alcoa memorandum from A. D. R. Frase		2000
to R. McKee, dated March 1, 1960	5557	2373
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265-Alcoa memorandum from A. D. R. Frase	0 5558	2374
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266-Alcoa memorandum from Leon E. Hickma	H	
to Ray E. Palmer, Subject: "Surprenar	0 5559	2375
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267-Rome memorandum from G. L. McCutcha	n	
to R. A. Schatzel, Subject: "SPT Cord	is	
With Aluminum Conductors", date		20070
August 22, 1960	5500	2376
268-Alcoa News Release, January 20, 1961	5567	2381
269-Alcoa memorandum from R. W. Knapp t	0	10000
D. R. Little, dated July 31, 1959	. 5569	2382
270- Rome request for Quotation dated November	er	1
7. 1960 from Boston Office with letter	r	
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271—Rome Request for Quotation dated November			
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272-Rome memorandum from G. A. Brodock to			
J. S. Scheppach, Subject: "Dow Chemical	. 1.		
Corp., Baton Rouge, La.", dated April 19,		4.1	
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1960 C. D. Pleis of Rome to Dow	0011		
273—Letter from C. D. Blair of Rome to Dow	5579	2393	
Chemical Company, dated April 21, 1960	3013	2000	
274-Letter from G. A. Brodock of Rome to			10
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dated October 30, 1958	5585	2397	
282-Alcoa memorandum from Dixon Lewis to		1	. 81
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287-Rome memorandum from R. E. Gates to			
western sales offices, Subject: "Aluminum		2.11	
rigid conduit", dated May 8, 1959	5590	2401	
ngia conduit, dated may o, 1995			
288-Rome memorandum from R. E. Gates to			
G. E. Rolston, Jr., Subject: "Atlantic Re-			
firing Company-Rigid Conduit", dated	5501	9409	
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289-Rome memorandum from R. R. Davis to			
Stewart Johnston, Subject: "Dutton Lain-			-
son Co", Hastings, Nebraska, dated May	1		1
20, 1959	5592	2403	
290-Alcoa memorandum from P. T. Coffin to All		1	
conductor salesmen, district managers, as-			
sistant district managers, branch man-		I.	,
agers, resident managers and chief admin-			
istrators, Subject: "Sales Organization for			
the Handling of Alcoa Aluminum and			15 3
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291-Alcoa News Release dated June 16, 1959	. 0000	2200	0
292-Aleca memorandum from J. E. Perryman to	- 15	1	
District Sales Office Managers, Subject:		. 70	
"Sales of Aluminum Conduit by Rome		0107	3
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308-Report submitted by H. T. Dyett to the			- "1
Board of Directors of Rome Cable Cor-			
poration at their meeting on December 10,		3000	
1958	5604	2416	
315-Minutes of Rome Cable Corporation, Tor-			
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rance Sales Conference, March 21 and 22,	5611	2423	

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334 -Rome memorandum from J. R. Woods to			
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348-Minutes of Rome Cable Corporation, "Cop-	5625	2441	· vp
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349—Minutes of Rome Cable Corporation, "Cop-	E 007	2443	
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350-Alcoa memorandum by R. R. Cope, Subject:			
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April 26, 1955	5629	2445	
351 Speech by R. A. Schatzel at the 1955 Rome		P	
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ject: "General Engineering and Research		aria.	
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353-Alcoa Electrical Conductor Division News-			
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354-Rome letter "To Our bare, weatherproof		. 11	
and magnet eustomers", dated April 6,			
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355-Speech by J. H. Dyett at the 1957 Rome			
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ject: "Materials, Money What They		3.	
Mean To You."	5648 .	2467.	
356-Unsigned undated handwritten memorandum			
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of Aluminum in Insulated Wares and			3
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357-Unsigned handwritten memorandum from			
Rome files, dated January 12, 1959, Sub-		1.4	
ject: "Potential Uses of Aluminum in In-		-	
sulated Wires and Cables"	5661	2481	
359-Rome memorandum from J. R. Woods to	7		
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360-Memorandum from A. D. R. Fraser to L. E.			
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363-Rome memorandum from J. R. Woods to		4	
A. D. R. Fraser, Subject: "Pricing-Cop-			
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1957 364—Letter from Margaret Jennings of Rome to	0011	17.	*
H. J. Zeck of Allis-Chalmers Manufactur-	1		
ing Co., dated May 27, 1958	5682	2501	
365 Rome memorandum from P. J. Lopushinsky	0000		
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A .			-

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1 120	366-Rome memorandum from J. R. Woods to	1. 6		
*	Alcoa and Rome District Managers, Sales-	1		
	men, Agents and Administrators, Subject:			
	"Aluminum Substitution", dated June 23,	* "		
	1960 attaching a speech by J. R. Woods			
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## IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

Civil No. 8030

UNITED STATES OF AMERICA, Plaintiff,

v.

### ALUMINUM COMPANY OF AMERICA AND ROME CABLE CORPORATION, Defendants

### COMPLAINT-Filed April 1, 1960

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

T

### Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes", commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of said Act.

2. The defendants Aluminum Company of America and Rome Cable Corporation maintain offices, transact business and are found within the Northern District of New York.

[fol. b]

II

### Defendants.

3. Aluminum Company of America is made a defendant herein. It is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office in Pittsburgh, Pennsylvania. Said defendant, together with its subsidiaries and affiliates, is hereinafter

referred to as "Alcoa."

4. Rome Cable Corporation (hereinafter referred to as "Rome-Delaware") is made a defendant herein. Rome-Delaware, a wholly-owned subsidiary of defendant Aluminum Company of America, was organized and exists under the laws of the State of Delaware, with its principal office in Rome, New York. Rome-Delaware was organized as a subsidiary of defendant Aluminum Company of America at or about the time of the acquisition, hereinafter alleged, of the assets of Rome Cable Corporation (hereinafter referred to as "Rome-New York"), a corporation organized under the laws of the State of New York.

#### III

#### Trade and Commerce

5. For many years Alcoa has been an integrated aluminum producer, engaging in the manufacture and sale of primary aluminum, intermediate aluminum products, and numerous end products including aluminum wire and cable, conduit, and cable accessories. Alcoa's combined sales of primary aluminum and aluminum products have for many years exceeded the combined sales of primary aluminum and aluminum products of any other domestic producer. As of December 31, 1958, Alcoa had assets amounting to \$1,337,258,520. In 1958 Alcoa's net sales and operating revenues amounted to about \$753,140,000, and its net sales in the United States of aluminum wire and cable, conduit, and cable accessories exceeded \$32,000,000.

[fol.c] 6. Alcoa produces more primary aluminum than any other producer in the United States. In 1958 Alcoa's primary aluminum production constituted about one-third of total domestic production. As of December 31, 1958 Alcoa's total capacity, including capacity under construction, constituted about 38 per cent of the total primary aluminum production capacity, including capacity under

construction, in the United States.

7. Alcoa mines and processes bauxite, an aluminumbearing ore, in the State of Arkansas and in certain foreign countries; produces alumina from bauxite at plants in Alabama, Arkansas, and Texas; owns and operates electric power facilities used in the production of alumina and aluminum; owns and operates steamship lines and railroads for the transportation of materials; produces primary aluminum pig and ingot from alumina at plants in several states, including Indiana, New York, North Carolina, Tennessee, Texas, and Washington; and sells and ships in interstate commerce aluminum pig and ingot manufactured at such plants to customers located throughout the United States.

8. Alcoa manufactures its intermediate and end products in several states, and sells and ships such products in interstate commerce to customers located throughout the United States. Alcoa also supplies aluminum pig and ingot, including types thereof required in the fabrication of electrical conductor wire and cable products, and intermediate aluminum products, including aluminum rod, to other manufacturers of wire and cable products.

9. Among the end products which for many years have been manufactured by Alcoa are aluminum wire and cable products, including those used as conductors of electricity, and conduit and cable accessories. Alcoa's aluminum wire and cable products include bare aluminum wire and cable, aluminum conductor steel-reinforced (referred to as "ACSR"), and insulated aluminum wire and cable, including weatherproof wire and cable and service drop cable. [fol. d] Alcoa manufactures these end products in several states and sells and ships such products in interstate commerce to customers located throughout the United States.

10. Prior to its acquisition by defendants in 1959, hereinafter alleged, Rome-New York was a manufacturer of copper and aluminum wire and cable products, conduit and cable accessories. Rome-New York also supplied intermediate copper and aluminum products to other manufacturers of wire and cable products, and engaged in the business of insulating, for other wire and cable manufacturers and others, bare wire and cable supplied by such customers. As of March 31, 1958, Rome-New York had assets amounting to approximately \$24,000,000. For the fiscal year ending March 31, 1958 its net sales amounted to about \$40,-600,000.

11. Rome-New York manufactured aluminum rod from

aluminum pig and ingot purchased from primary aluminum producers, including Alcoa, and manufactured copper rod from copper wire bar purchased from copper producers. From its Rome, New York plant, Rome-New York shipped in interstate commerce aluminum and copper rod sold to its customers, including other wire and cable manufacturers, located in many states of the United States. In addition, Rome-New York fabricated copper rod for competing wire and cable manufacturers, on a toll basis, from copper wire bar supplied by such manufacturers.

12. Rome-New York also fabricated, at its New York plant, and sold and shipped in interstate commerce to customers located in many states of the United States, aluminum and copper wire and cable products, including bare wire and cable, ACSR, weatherproof wire and cable, service drop cable, magnet wire, building wire, power and control cable, service entrance cable, heavy duty flexible cords and cables, mining and welding cable, hook-up wire, instrumentation and missile cable, and many custom-built

cables for industry and Government.

[fol. e] 13. Rome-New York also manufactured, at its plant in Torrance, California, and sold and shipped in interstate commerce to customers located in many states of the United States, steel conduit, elbows and couplings, and mechanical tubing. At its "Cope Division" plant in Collegeville, Pennsylvania, Rome-New York manufactured and shipped in interstate commerce to its customers located in many states of the United States, a complete line of aluminum and steel products used in cable supporting systems, including cable trough, cable pulling devices, and other cable installation accessories, tools, and equipment.

14. Prior to the acquisition of Rome-New York, Alcoa and Rome-New York had been competitors in the production and sale of various wire and cable products, accessories (including conduit and cable installation devices and products), and to some extent aluminum rod.

15. A large percentage of the total United States production and sale of various wire and cable products has become concentrated in relatively few companies, including Alcoa and other companies which also are suppliers of basic materials required by their wire and cable competi-

tors. Such concentration has been achieved, in part, through

recent acquisitions and mergers.

16. In addition to the acquisition of Rome-New York, in January 1960 Alcoa acquired Rea Magnet Wire Co., Inc. (Rea). Rea had been engaged in the manufacture and sale of wire and cable products, including magnet wire. In 1958 Rea's net sales were approximately \$17,500,000, and for the first ten months of 1959 were approximately \$19,700,000.

[fol. f]

IV

## Offense Charged

17. On or about February 17, 1959, defendant Aluminum Company of America and Rome-New York entered into a Plan and Agreement providing for the acquisition by said defendant of the assets, properties, contract rights, business and good will of Rome-New York in exchange for common stock of said defendant, and reserving in said defendant the right to effect the acquisition either directly or through a subsidiary. On or about March 31, 1959, pursuant to the aforesaid Plan and Agreement, all of Rome-New York's assets, business and good will were transferred to Rome-Delaware, a newly-organized, wholly-owned subsidiary of defendant Aluminum Company of America. Rome-Delaware, since said acquisition, has functioned as a division of defendant Aluminum Company of America. The effect of such acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual and potential competition in the production and sale of various wire and cable products, and in the production and sale of various accessories thereto, including conduit and cable installation devices and products, may be substantially lessened.

(b) Actual and potential competition between Alcoa and Rome-New York in the production and sale of various wire and cable products, and in the production and sale of various accessories thereto, in cluding conduit and cable installation devices and

products, has been eliminated.

[fol. g] (c) Alcoa's competitive advantage over other manufacturers of various wire and cable products, and over manufacturers of various accessories thereto, may be enhanced to the detriment of actual and potential competition.

(d) Concentration of the production and sale of various wire and cable products in the hands of a few companies has been increased to the detriment of

actual and potential competition.

(e) Alcoa's competitive advantage as in integrated producer of aluminum and aluminum products, as a supplier of materials to wire and cable producers, and as a producer of wire and cable products, may be enhanced to the detriment of actual and potential competition.

(f) Mergers and acquisitions in the wire and cable field may be fostered with a consequent increase in economic concentration to the detriment of ac-

tual and potential competition.

## Prayer

## Wherefore, Plaintiff Prays:

1. That the aforesaid acquisition of the assets of Rome-New York be adjudged and decreed to be in violation of

Section 7 of the Clayton Act.

- [fol. h] 2. That, pending a final adjudication of the merits of this complaint, a preliminary injunction issue enjoining the defendants, their officers, directors, agents, and all other persons acting on their behalf from consolidating or intermingling the business operations now conducted by Rome-Delaware or its assets or operating personnel with those of Alcoa, and from making any changes in the corporate structure by consolidation or otherwise, the commercial operations, or the distribution policies of Rome-Delaware.
- 3. That under such terms and conditions as this Court may prescribe, defendants be required to divest themselves of all the assets, business and good will of Rome-Delaware and all other assets, business and good will acquired from, or resulting from the acquisition of, Rome-New York.

4. That defendants, their officers, directors, agents, and all persons acting on their behalf be enjoined from acquiring, for such period as the Court may direct, stock or assets of any other company engaged in the production or sale of wire or cable products, conduit, or cable accessories.

5. That the plaintiff have such other and further relief

as may be just and proper.

6. That the plaintiff recover the costs of this suit.

/s/ Samuel Karp, Attorney, Department of Justice.

/s/ William P. Rogers, Attorney General. /s/ Robert A. Bicks, Acting Assistant Attorney General. /s/Charles L. Whittinghill, Attorney, Department of Justice. /s/ Theodore F. Bowes, United States Attorney.

[fol. i] Verification of Complaint Omitted in printing.

[fol. j] [File endorsement omitted],

# [fol. k] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

#### Civil No. 8030

## UNITED STATES OF AMERICA, Plaintiff,

## ALUMINUM COMPANY OF AMERICA AND ROME CABLE CORPORATION, Defendants.

## Answer-Filed May 18, 1960

Defendants, Aluminum Company of America and Rome Cable Corporation, answer the complaint herein as follows:

- 1. Defendants deny each and every allegation of paragraph 1, except that they admit that the plaintiff, United States of America, purports to bring this action and to invoke the jurisdiction of this Court under the statutory provisions specified therein.
  - 2. Defendants admit the allegations of paragraph 2.
  - 3. Defendants admit the allegations of paragraph 3.
  - 4. Defendants admit the allegations of paragraph 4.
- 5. Defendants deny each and every allegation of paragraph 5, except that they admit and aver that Alcoa has been an integrated aluminum producer engaging in the manufacture and sale of primary aluminum, intermediate aluminum products and certain end products, including electrical wire and cable using aluminum as conductor, aluminum conduit and cable accessories; that while Alcoa's combined sales of primary aluminum and intermediate products made from aluminum have for many years exceeded the combined sales of any other domestic producer, Alcoa's percentage of such sales has steadily declined during the past several years; that as of December 31, 1958, [fol. 1] Alcoa had assets amounting to \$1,337,258,520; and that in 1958 Alcoa's net sales and operating revenues amounted to about \$753,140,000, and its net sales in the United States of electrical wire and cable, conduit and cable accessories exceeded \$32,000,000.

6. Defendants ádmit the allegations of paragraph 6.

7. Defendants admit the allegations of paragraph 7, except that defendant denies that Alcoa has yet produced primary aluminum in the State of Indiana.

8. Defendants admit the allegations of paragraph 8.

9. Defendants deny the allegations of paragraph 9, except that they admit and aver that among the end products which have been manufactured by Alcoa are electrical wire and cable products using aluminum as conductor, aluminum conduit, and cable accessories; that Alcoa's electrical wire and cable products include bare wire and cable, aluminum conductor steel-reinforced (ACSR), and insulated or covered wire and cable, including weatherproof wire and cable and service drop cable; and that Alcoa manufactures certain of these products in one or more states and sells and ships them to customers located throughout the United States.

10. Defendants deny the allegations of paragraph 10, except that they admit and aver that prior to its acquisition by defendants in 1959, Rome-New York manufactured electrical wire and cable products, steel conduit, cable trough and cable installation devices; that certain of Rome-New York's wire and cable products were made with either copper or aluminum as the electrical conductor; that Rome-New York supplied certain intermediate products to other manufacturers of electrical wire and cable products; that Rome-New York insulated for defendant Alcoa bare wire and cable supplied by defendant Alcoa; and that as of March 31, 1958 Rome-New York had assets amounting to approximately \$24,000,000 and for the fiscal year ending March 31, 1958 had net sales amounting to about \$40,600,000. [fol. m] 11. Defendants deny the allegations of paragraph 11, except that they admit and aver that Rome-New York manufactured aluminum rod from alminum pig and ingot purchased from primary aluminum producers, principally Alcoa, and manufactured copper rod from copper wire bar purchased from copper producers; that from its Rome, New York plant, Rome-New York sold copper rod to other electrical wire and cable manufacturers located in other states of the United States; that Rome-New York sold

aluminum rod almost exclusively for non-electrical pur-

poses; and that Rome-New York rolled copper rod for other wire and cable manufacturers on a toll basis from

copper wire bar supplied by such manufacturers.

- 12. Defendants deny the allegations of paragraph 12, except that they admit and aver that Rome-New York fabricated, at its Rome, New York plant, and sold to customers located in other states of the United States electrical wire and cable products, including bare wire and cable, ACSR, and insulated or covered wire and cable products, including weatherproof wire and cable, service drop cable, magnet wire, building wire, power and control cable, service entrance cable, heavy duty flexible cords and cables, mining and welding cable, hook-up wire, instrumentation and missile cable, and many custom-built cables for industry and Government; further answering, defendants aver that the conductor used by Rome-New York in its electrical wire and cable products was predominantly copper.
  - 13. Defendants admit the allegations of paragraph 13.
- 14. Defendants deny the allegations of paragraph 14, except that they admit and aver that Rome-New York, Alcoa and numerous other manufacturers were engaged in the sale of electrical wire and cable products and conduit; further answering, defendants aver that the cable installation devices offered by Rome-New York were different from and not competitive with cable accessories offered by Alcoa.
- [fol. n] 15. Defendants deny the allegations of paragraph 15.
- 16. Defendants deny the allegations of paragraph 16, except that they admit and aver that in January 1960, Alcoa purchased substantially all of the assets and assumed substantially all of the liabilities of Rea Magnet Wire Company, Inc. (Rea), a manufacturer of magnet wire, and that Rea's net sales for 1958 were approximately \$17,500,000, and for the first ten months of 1959 were approximately \$19,700,000.
- 17. Defendants deny the allegations of paragraph 17, except that they admit and aver that on or about February 17, 1959, defendants Alcoa and Rome-New York entered into a Plan and Agreement providing for the acquisition by Alcoa of substantially all of the assets, properties, contract rights, business and good will of Rome-New York in ex-

change for common stock of Alcoa and the assumption by Alcoa of substantially all the liabilities of Rome-New York, and reserving in Alcoa the right to effect the acquisition either directly or through a subsidiary; that on or about March 31, 1959, pursuant to the aforesaid Plan and Agreement substantially all of Rome-New York's assets, business and good will were transferred to defendant Rome-Delaware, a newly organized, wholly owned subsidiary of Alcoa; and that Rome-Delaware since the said acquisition, has been a division of Alcoa.

Ferris, Hughes, Dorrance & Groben, First National Bank Building, Utica, New York. /s/ Robert Groben. Bergson & Borkland, 918 16th Street, N. W., Washington 6, D. C. /s/ Herbert A. Bergson. /s/ Howard Adler, Jr., /s/ William K. Unverzagt, 1501 Alcoa Building, Pittsburgh 19, Pennsylvania. Attorneys for Defendants.

[fol. o] [File endorsement omitted.]

## [fol. 1] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

#### Civil No. 8030

### UNITED STATES OF AMERICA, Plaintiff,

#### against

ALUMINUM COMPANY OF AMERICA AND ROME CABLE CORPORATION, Defendants.

## Transcript of hearing-February 5, 1962

The trial in the above-entitled matter was had pursuant to notice at the United States District Court, held in andfor the Northern District of New York, at Utica, New York, commencing Monday, February 5th, 1962, before Honorable Stephen W. Brennan, United States District Judge.

### [fol. 2] APPEARANCES:

Hon. Justin J. Mahoney, United States Attorney for the Northern District of New York, Federal Building, Albany, New York. Donald F. Melchior, Esq., Charles D. Mahaffie, Jr., Esq., Richard J. Wertheimer, Esq., Attorneys, Department of Justice, Appearing in behalf of the United States of America.

Bergson & Borkland, Esqs., Herbert A. Bergson, Esq., Howard Adler, Jr., Esq., Hugh Latimer, Esq., John Voortman, Esq., 918 16th Street, N. W., Washington, D. C. William K. Unverzagt, Esq., 1501 Alcoa Building, Pittsburgh 19, Pennsylvania. Ferris, Hughes, Dorrance & Groben, Esqs., Robert Groben, Esq., John Liddy, Esq., First Bank Building, Utica, New York, Attorneys for Defendants.

[fol. 3] The Court: Gentlemen, I understand this is the United States of America against the Aluminum Company of America and the Rome Cable,

Are you gentlemen ready?

Mr. Melchior: The Government is ready.

Mr. Bergson: Defendants are ready, your Honor,

The Court: All right, let me see if I got the right appearances handed to me by the stenographer.

For the Government, Mr. Melchior, Mr. Mahaffie and Mr.

Wertheimer.

Mr. Melchior: That is correct.

The Court: For the Defendants, Mr. Bergson, Mr. Adler, Mr. Latimer and Mr. Unverzagt and Mr. Groben and Mr. Liddy. Well, Mr. Groben and Mr. Liddy are for the Rome Cable; is that correct?

Mr. Bergson: For both, your Honor.

The Court: I guess that's right. All of you people represent both defendants?

Mr. Bergson: Yes, your Honor.

The Court: Appear for both defendants. All right, gentlemen. It is a little later than I expected it would be, but I would be glad to have you open the case and give me as much education as you can, because this particular type of case is somewhat new to me.

All right, Mr. Melchior, do you want to outline the

[fol. 4] Government's contentions here?

OPENING STATEMENT ON BEHALF OF GOVERNMENT BY
MR. MELCHIOR

Mr. Melchior: Yes, your Honor.

May it please the Court, this is a Section VII proceeding involving the merger of Alcoa, Aluminum Company of America and Rome Cable Corporation. It is not my purpose at this time to review the matters discussed in the brief at length. I do feel, however, it would be desirable to pose the issues clearly so that we may make clear to the Court what we think the basic issues are in this case. I am not sure that these have been made completely clear in the briefs, I want to make sure that the proper tests are applied. And we want to insure that we bring to this Court's attention what we think to be the clear congressional mandate as it was enunciated in 1950, when Section VII was amended.

As we see it, there are two basic primary issues in this case which should be decided at the outset, or should be posed at the outset. In the first place, shall a company of

the size, dominance and/or degree of integration of Aluminum Company of American in the field of aluminum or aluminum products be permitted to add to this dominance by merger, by acquisition, in a manner that we believe to be in controvention of the prohibitions of Section VII. [fol. 5] And we feel the second basic competitive issue if whether a company of the stature and independence of Rome Cable Corporation, an important and substantial company in the field of wire and cable, can be eliminated from the competition scene as an independent factor.

Now, I believe I should mention in passing what we believe the congressional mandate to be. As your Honor knows, Section VII was first enacted in 1914 along with other sections of the Clayton Act. And the motivating purpose behind the enactment of Section VII at that time was to cure what the Congress considered to be the defects in the Sherman Anti-Trust Act, which had been passed about two decades earlier. The Sherman Act had been found to be wanting in avoiding the increase in economic concentration of the growth of trusts or monopolies. Section VII was a good part of that legislation. Over the years from 1914 to World War II, however, Section II had been found wanting. It did not appear to have halted the rise in economic concentration by merger which became severely acute following World War II.

As a result of this great wave of mergers in 1950, Con-[fol. 6] gress amended Section VII to better implement what they considered to be their purposes. In so amending they gave an indication of what they felt the legislation would accomplish. Now, I don't intend to read from the legislative history except in one or two instances to point up what they believed to be the purpose.

The House report in 1950 which accompanied the Act stated: "Measured by practically any method and compared to practically any standpoint the measure of economic concentration in the American economy is high. Moreover the long-term trend of concentration has been steadily upward. This long length rise in concentration has been due in considerable part to the internal expansion of business through mergers, acquisitions and consolidations."

The Senate report likewise expressed the same philoso-

[fol. 7] phy. .The report stated "While there exist many different opinions on other aspects of monopoly there is substantial agreement that the level of economic concentration is extremely high." The Senate also expressed the view that the enactment of Section VII as it was to be amended in 1950 would further be expected to limit the growth of monopolies, thereby aiding and preserving small business as an important competitive factor in the American economy. Since the amendment in 1950 a number of courts have expressed similar philosophies and we have covered those in the brief and I mention them in passing particularly U.S. v. Bethlehem Steel, and U.S. v. Crown Zellerbach which is the most recent Circuit Court opinion on Section VII as amended. I believe we made available a copy of this opinion to the Court. What has been the success of Section VII in halting the rise in the merger. field and the increase in concentration? I would like to cite a few statistics on this account. The Government has filed 57 cases under Section VII involving mergers since 1950. Of these 57, only eight have been litigated and of these only three have been successfully concluded from the Government's standpoint. To date this case is one of the few which has moved particularly rapidly, and I think the Government is indeed fortunate in this respect that an important case of this type can be brought to issue so quickly. In January of this year the Federal Trade Com-[fol. 8] mission made an announcement which indicated a degree of success which the Government has had in halting the rise in tide of mergers that Section VII was amended to halt and I think these figures are significant. announced in 1960 there had taken place approximately 1,012 significant mergers, and in the year 1961, 1,234. Now the significance of this figure is that it is the largest merger year since the year 1929. To me, this points up the utter failure of the Government to halt this growing merger trend and it also points up to me the importance and significance of this case.

Now I would like to state briefly what it will be our purpose to attempt to prove in this proceeding. We will try and show that this merger is just one of a pattern of mergers in the aluminum, wire, and cable field. As a matter of fact, it is one of a pattern of mergers in the

whole conductor wire and cable field, including both aluminum and copper. It will be our purpose to show that the acquiring company in this case is a company of dominance. It is not only the largest primary aluminum producer in the country but also the largest in the country in a number of related products. It is fully integrated. They are producers of aluminum from the pig right through to the fabricated products.

[fol. 9] It is also broadly integrated from a horizontal standpoint in that the products that it manufactures and

sells cover a wide and broad line.

We will attempt to show that the aluminum conductor wire and cable field can be best described as an oligopoly, and the word oligopoly to us means the next step to monopoly.

We will attempt to show that the aluminum wire and cable field is not only dominated by Aluminum Company of America, but that its closest competitors are other integrated aluminum companies, and that the industry as a whole is dominated by this small and exclusive group.

We will attempt to show that by wirtue of this condition it will be extremely difficult and has proved exceedingly difficult for smaller companies, independent companies who desire to enter this field of production for the first time. As a matter of fact, we will show that there has been no significant entry over the last several years, and we will show you why there has been no entry through the testimony of witnesses.

We will also attempt to show that certain practices engaged in by the integrated companies and by the Defendant in this case create an environment that is not conducive to the growth and increase in the share of the market that is presently held by the non-integrated aluminum wire and [fol. 10] cable producers.

We will show their share of the market is in a constant decline, and that the share of the business is moving not only to the integrated companies, but to ALCOA.

Now in order to evaluate the two basic competitive issues which we have posed, we must do this against the background of three primary legal issues. These three issues have been posed by the Congress when they amended Sec-

tion VII, and they have been restated by the Courts in recent Section VII cases.

These three basic legal issues are, 1, line of commerce; 2, section of the country; and, three, the probable impact of the merger.

It is the Government's burden to prove each of these

three legal issues to the satisfaction of the Court.

Directing our attention first to the legal issue of line of commerce, in this respect this particular issue has been narrowed by the pre-trial negotiations, briefs and other papers of the parties. The Government has urged that there are ten specific lines of commerce which will probably be adversely affected by this merger, and as we understand [fol. 11] the Defendant's admissions and pre-trial statements, they are willing to admit to five of these.

And I mention specifically in this regard that the legislative history of the Congress and the statements of the Court indicate in this respect that it is only necessary that one line of commerce be demonstrated where in a probable

injury may take place.

As the supreme court stated, or as was quoted from the supreme court opinion in duPont, the phrase 'In any line of commerce' is comprehensive and means that if the forbidden, effect or tendency is produced in one out of all the various lines of commerce, the words 'In any line of commerce' literally are satisfied.

We submit in this connection that the burden of the

Government has been materially decreased.

I would like to spend a moment pointing up the basic issue, I believe, facing the Court from a legal standpoint with respect to the question of line of commerce.

There seems to be two lines of opinions on this matter, [fol. 12] and it is our view that the difference is brought about because of a basic misunderstanding between the effect of the Clayton Act and the Sherman Act as regards a merger proceeding. This case is brought under Section VII of the Clayton Act. The Sherman Act and Sherman Act language have no relevancy in the Section VII proceeding.

There has been a tendency in recent months and years for Defendants' counsel in these proceedings to attempt This incidentally since the Congress and the Courts very readily agree that the Clayton Act standard is a much more liberal standard insofar as the Government is concerned. The line of commerce standard insofar as Section VII law is concerned we believe that is the best expressed in the

is concerned we believe that is the best expressed in the General Motors-duPont case, wherein they established as a criteria to be used in determining the line of commerce are those products which have distinctive characteristics in use. And we urge that this is the proper standard in a

Section VII proceeding as regards line of commerce. [fol. 13] Now there is language, and I believe the Defendant has used the language in their briefs which indicate that the standard should be a standard drawn from a case which is better known as the Cellophane decision. And there has been a deliberate attempt on the part of the Defendants in merger cases to merge into Section VII proceedings, this Cellophane decision. As a matter of fact, certain Courts have almost taken this position also.

And I think this is the first basic issue that will face the Court in this proceeding. I do not intend to go into this in detail at this time. I believe our brief adequately covered it, but I think this is the basic legal question as regards the line of commerce here. Shall we have a Clayton Act standard to carry out the intention of the Congress or shall we drop it back to the Sherman Act standard and have the same problem facing the courts when the Clayton Act was amended.

The Court: Mr. Melchior, what really you are saying is that the Government is going to oppose and does oppose this theory of interchangeability.

[fol. 14] Mr. Melchior: Yes.

The Court: Of products as determining the line of commerce.

Mr. Melchior: Yes, Your Honor. It is our position that a line of commerce under Section VII should be determined on the basis of distinguishing characteristics and usage. The question of interchangeability we believe is one, is a Sherman Act standard.

Now I would like to say at this time we feel that the Government should prevail, under either standard. But we feel the proper standard is the Section VII standard.

as expressed by the General Motors-duPont and as followed in the Cellophane decision and in the Crown Zellerbach decision.

The Court: That pretty near means I have to overrule the supreme court in the Cellophane case, I suppose.

Mr. Melchior: I don't believe that means that, Your Honor, because the Cellophane case was a Sherman Act case. It was not a Clayton Act case.

Now I would like to read some language from the Seventh Circuit in the Crown Zellerbach decision.

[fol. 15] "The effort to establish that all coarse papers . . . " the question there was the plaintiff affeged that Census coarse papers were a line of commerce and the defendant alleged that all coarse papers should be a line of commerce—the defendant taking a much larger Universe and the defendant alleged this following the Cellophane philosophy-the Court said "The effort to establish that all trade coarse papers should be included within the relevant market on the basis of their being substitutable or interchangeable in end use with the products listed under Census coarse paper is, we think, put forward in an effort to apply such case as "Cellophane and Columbia Steel". -which was also a Sherman Act case, Your Honor. The [fol. 16] Court goes on, "We think that these cases are not relevant here." And this is the seventh circuit less than a year ago. They go on and say, "The problem which arises in a case involving Section VII of the Clayton Act, is a very different one. There the Commission since this was a Federal Trade Commission case, the word "Court" could be substituted-"The Commission must determine in any line of commerce in any section of the country which merger may substantially lessen competition." As suggested in United States against Bethlehem Steel Corporation, and they quote "When the question is power over price substitute products may be relevant, because they can eliminate that power."

The issue under Section VII of the Clayton Act is not whether a merger may result in a company having power over price, or the power to exclude competition. The issue under Section VII is whether there is a reasonable probability of a substantial lessening of competition. There can be a substantial lessening of competition with respect

to a product, and here is the significant phrase, "Whether or not there are reasonably interchangeable substitutes," [fol..17] and we think this decision poses the problem precisely and has selected the right view, and we think this is very significant. As I said, I believe that we can prevail under either the Cellophane Doctrine or the General Motors. Crown Zellerbach, or Bethlehem Doctrine, but we took the latter to be the correct one. Now, I don't want to give the Court the impression that we do not feel that the wire and cable field generally cannot also be a line of commerce. The Government in this case is arguing first that the Aluminum wire and cable lines are the appropriate lines of commerce where the most direct and immediate damage will probably be felt. We do think, however, that the broader line which would encompass both copper and aluminum is also an appropriate line, since this broader line also has peculiar use and characteristics, but we do not feel that the probable damage in this broader line will be as immediate or as direct. We feel the ultimate damage there may be even greater but . . .

Now, I would like to move on to the second basic issue, the second basic legal issue which is posed by this decision, [fol. 18] by this proceeding. And this is the legal question of section of the country. But here the Court and the parties are indeed fortunate as respects a proof situation since the parties are almost in comp-ete agreement on this matter. The Plaintiff has urged and the Defendant agreed that each of the ten lines of commerce or the five lines of. commerce merged by the parties have as an appropriate section of the country the nation as a whole. I don't want to be in the position of misquoting counsel but this is as I read the papers. The only issue of a factual nature under this legal issue of line of commerce respects what the Government describes as eleven state western area. Wherein we believe competition will probably be substantially lessened in the conduit and aluminum conduit field in this eleventh state western area, bordering the Pacific Ocean. This is the only section of the country problem facing the Court in this instance. I would like to now pass to the third basic legal issue.

The Court: Let me interrupt you so that I don't have too much trouble with the so-called relevant market. All

\* [fol. 19] that I have here is that both of you urge the United States as a whole. Then you urge the other states as the relative market in certain types of lines of commerce and the Defendant disputes it?

Mr. Melchior: Yes. Let me be a little more specific. If we consider our ten lines of commerce, three of which are aluminum lines, three of which are general conductor lines service drop cable and then certain raw materials used for the production of aluminum wire cable and conduit—Now, the Government urges that an appropriate line of commerce is conduit including both steel and aluminum.

The Government also urges that aluminum conduit alone is an appropriate line of commerce. Defendants agree, as I read their papers that conduit is a line of commerce. They disagree that aluminum is a line of commerce, aluminum conduit.

The Government urges that with respect to both conduit and aluminum conduit the nation as a whole is an appropriate market, as well as the lesser included area, the eleven western states. In other words, the government is adopting the philosophy of a market, a narrow geograph—[fol. 20] ical market within a broader one, and we adopt this smaller market because we believe the probable damage will be greater in this smaller market than in the nation as a whole, although we are in agreement with the Defendant that the damage will take place in the nation as a whole.

Does that answer your question, your Honor? I would like now to discuss the third basic issue facing the Court of a legal nature, and this relates to the question of impact. With respect to the question of impact, which I use as a short term to describe the third legal issue, which is probable substantial lessening of competition. I believe here we have the same problem that we face with respect to line of commerce. Here there is a studied intent on the part of Defendant counsel to import, wittingly or inwittingly, a Sherman Act standard into the Clayton Act. And the question that is posed, as I see it, is must the restraint or the lessening of competition be actual or only reasonably probable?

Now, Section VII in its plain language prohibits a mer-[fol. 21] ger if there may result a substantial less -- ing 0

of competition in any line of commerce in any section of the country, and the courts and the legislative history indicates that it may result in reasonable probability as op-

posed to actuality.

Now, in order to prove a violation of the Sherman Act you must show an actual restraint or an actual monopoly or an actual intent to monopolize. Section VII however, is different. Section VII, the standard is merely a reasonable probability that a substantial lessening of competition will result. So it little serves Defendant to try and show that since the merger there has been no damage, because that is not the proper standard of Section VII.

The Court: Well, aren't probabilities measured to the extent that experience is available? Aren't probabilities

measured by experience?

Mr. Melchior: I think this function of the Court, and it is the purpose of the Government to place before the Court market conditions as they exist at the time of the merger, as they exist now so the Court can see what factors are [fol. 22] motivating the parties, what factors are preventing small business from thriving, and that the other market conditions are, and against this back-drop it is the duty of this Court to predict what the probable result will be.

This Court does not have to find an actual damage. I wish to read in this respect from the legislative history, and it is very clear in many places on that point.

I would like to read this one paragraph: "The words, may be in the statute have been in Section VII of the Clayton Act since 1914. The concept of reasonable probability conveyed by these words is a necessary element in any statute which seeks to arrest restraints of trade in their incipiency and before they develop into full-fledged restraint violative of the Sherman Act. A requirement of certainty and actuality of injury to competition is incompatible with any effort to supplement the Sherman Act by reaching incipient restraints."

This now again poses the problem that the Court will have to decide. The Clayton Act and Section VII specifically was enacted by Congress because the Sherman Act [fol. 23] was not doing the job in the merger field, and they tried to tighten it up in a number of ways. And one of the ways was to require the Court not to find an actual

damage but where there is a reasonable probability that damage may result in the future. The three cases I cited as the three cases consistent with the Government's theory again are General Motors-Dupont; Crown Zellerbach and the United States Steel-Bethelem, all of which were covered in our brief.

One other aspect of the impact problem that I think is worth mentioning in order to pose the problem has to do with the degree of the standard of probable damage that must be met. I think it is quite obvious that Congress amended the statute such as the Sherman Act because it was not doing the job in the particular respect that the standard must be a stricter one. And Congress was concise on this matter also. This report states, the Committee report states:

"The Committee wishes to make it clear that the bill is not intended to revert to the Sherman Act itself. The intent here, as in other parts of the Clayton Act, is to [fol. 24] copy with the monopolistic tendency in their incipiency and while before they have attained such afforts as would justify a Sherman Act proceeding."

The Court: Mr. Melchior, there is no contention here by the Government that in going to the language of Section VII that this merger tends to create a monopoly; is there?

Mr. Melchior: There is the view on the Government's part that this merger may result in a substantial lessening of competition and a tendency to monopoly.

Now, precisely what a tendency to monopoly is in here, we have gotten very little guidance from the Courts and the Congress in this matter.

The Court: I will define it.

Mr. Melchior: We don't allege that a monopoly exists, your Honor. Now, along this same line I would like to point out one of the arguments of defense counsel in this proceeding which keeps coming up to plague us. And this is their constant urgings that the degree of direct competition between Alcoa and Rome was not large. I think they say something to the effect that Rome competed only with about 4 per cent of the business of Alcoa. I am not [fol. 25] sure how they arrived at this figure, but let's accept it.

Now, we know that Alcoa was an aluminum company and made aluminum wire and cable and aluminum conduit. Rome, on the other hand, was primarily a copper wire and cable company and manufactured the steel conduit. But we will show that Rome had also begun the production of aluminum wire and cable and was rapidly moving into that field. We will also show that Rome was an excellent insulator of wire and cable, and expertise, which apparently Alcoa didn't have, because this was one of the primarily factors in Alcoa's purpose of acquiring Rome Cable,

We will show, however, that Alcoa had also taken steps

in the production of insulating wire and cable.

So while it is argued that the direct competition in identical products between the two companies was small, since it was embryonic, it is our position that if the merger had not taken place and Rome had continued as a strong independent entity that she would have continued to grow and the competition would have increased. But in spite [fol. 26] of this fact whether or not the degree of competition was large or small is not a necessary element in a Section VII proceeding. And I would like to read again from the Congressional Report on this matter. And they said as a type of merger which is prohibited by Section VII is the following, and I think it is very significant:

"If, for example one or a number of raw material producers purchases firms in a fabricating field, i.e. a forward vertical acquisition . . ."

and I submit this is definitely a forward vertical acquisition

". and if as a result thereof competition in that fabricating field is lessened in any section of the country the law would be violated."

and here is the significant statement

". even though there did not exist any competition between the acquiring and the acquired acquired firms."

So we submit that the efforts of the defendants to constantly reiterate the fact that the direct competition be-

tween the two was small and embryonic is of no consequence [fol. 27] in this situation, under the law.

I would like to close briefly by mentioning what we understand the government to show in this proceeding. We intend to show that each of our lines of commerce are characterized by distinguishing characteristics and uses and that they meet the General Motors, Bethelehem and Crown test. We intend to show that the relative sections of the country are nationwide with respect to all of these products; that the change will be felt throughout the nation and more specifically with respect to conduit in the eleven Western State areas.

We intend to show with respect to impact that by virtue of the size and dominance of Alcoa, and by virtue of the integrated nature of the industry that entry of new producers, new independent producers into the field of aluminum wire and cable and conduit, particularly aluminum conduit is made more difficult.

[fol. 28] We intend to show there has been no significant entry. We will show that this taken in conjunction with other mergers of integrated companies in this field if not stopped by the courts will continue to snowball and may result in the complete elimination of all non-integrated independent companies. Other than those who are so financially powerful they may weather the storm, and there are not many of them.

We intend to show certain practices utilized by the defendants and by other integrated companies which permit them to take advantage of their size and position in the market place to the detriment of the smaller companies. And we intend to show that if the Courts do not halt this rising merger trend in the aluminum wire and cable field and in the conduit, and particularly the aluminum conduit field that the continued independent competitive existence of many of the smaller companies will be seriously threatened and their demise may be imminent.

Thank you, Your Honor.

The Court: All right, Mr. Bergson, do you want to outline your case to me a bit?

Mr. Bergson: Yes, Your Honor. Rather than outline ours a bit, I would like to take a few issues with Mr. Melchior's first. I don't know whether I misunderstood him

[fol. 29] when he said that we agreed on five lines of commerce. We do agree that there are in existence five lines of commerce but we don't agree that this merger substantially affected these lines of commerce at all.

In listening to Mr. Melchior's argument you can't help but get the impression that the government takes the position that the Clayton Act was intended to make mergers unlawful per se; that the mere fact of acquisition unduly lessens competition or tends to a monopoly. This of course was not the purpose of the Act and it has not been the practise of the Courts in interpreting the Act. The Courts have said that the impact of the acquisition has to be such that there is—an injury to the public may result, which was in the International Shoe Case, which was prior to the 1950 amendment cited with approval in the legislative flistory of the 1950 Act.

[fol. 30] Secondly, the Court in the Continental Can case has said that the competition lessened must be substantial, that it can't be any insubstantial lessening of competition.

Now, thirdly, and much more importantly, however, the fundamental issue between us and the Government here other than the effects issue is what the Congress meant when it used the term "line of commerce."

Mr. Melchior has cited from the General Motors-Dupont Case and said that there the Court adopted a distinctive characteristics and uses test. He said that the Sherman Act tests of yore were never intented to apply; that if a product has distinctive characteristics and uses it constitutes a line of commerce.

Now, I think it important to read to the Court what the Supreme Court did say in the General Motors-Dupont case, and not to extract from that opinion the one sentence that Mr. Melchior referred to. As a guide for determining the line of commerce in Section VII cases, the Court said: "The determination of the relevant market is a necessary predicate to a finding of violation of the Clayton Act, be-[fol. 31] cause the threatened monopoly must be one which will substantially less competition within the area of effective competition. Substantial can be determined only in the terms of the market affected. The record shows that automotive finishes and fabric have sufficient peculiar characteristics and uses to constitute them products suffi-

ciently distinguishable between all other finishes and fabrics to make them a line of commerce within the meaning of the Clayton Act."

So what the Court did in the General Motors-Dupont case is find that as a matter of fact they couldn't apply the test of the Cellophane Case because factually there were no reasonably interchangeable products.

Now, this decision has been battered back and forth by the Government and Defendant in anti-trust cases on many occasions, and in the Screen Gems Case. Judge Herlands in the Southern District of New York took up these two contentions and said this: "The test" namely, the reasonably interchangeability test and the peculiar characteristics and uses test, he said, "The tests enunciated by the [fol. 32] authorities are consistent. Effectively, the test 'reasonable interchangeability for the purposes for which the products are produced,-price, use and qualities considered,'-and the test 'sufficient peculiar characteristics and uses to constitute them products sufficiently distinct ... to make them a line of commerce within the meaning of the Clayton Act,' are but different verbalizations of the same criterion. They require the same accumulation and scrutiny of facts and application of judgment. The task is to find the area of effective competition, the characteristies and uses formulation does not limit the Court's inquiry to physical attribute and foreclose inquiry into the competitive situation."

And the Court applying that formula to that case, refused to adopt the Government's peculiar characteristics and uses test on motion picture film for projection over television stations, and said that all television programming was the area of effective competiton to be considered.

Now, this is consistent with the Brown Shoe Case on [fol. 33] which the Government relies, because in the Brown Shoe case the Court said, "We must go to the facts in the case and see what the testimony here revealed and make a determination of the line of commerce from the practices in the industry, the characteristics and uses of the products, their interchangeability, price, quality and style."

Now, I submit, your Honor, that to conjure up a phrase that the Government did in its brief when they said that

which is something we have never been able to find anywhere else but in their brief, is an indication of their fear that they will not be able to establish an area of effective competition in this case within which there will probably be a lessening of competition or a tendency to monopolize.

Further than that, your Honor, Mr. Melchior, says that Section VII was enacted to cure the evils that were not taken care of by the Sherman Act. He said that the evil was that we had to nip incipient Sherman Act violations in the bud. Well, if you are going to nip an incipient Sherman Act violation in the bud, how do you find whether it is an [fol. 34] incipient Sherman Act violation unless you apply the same market test to determine what the relevant market is, or to use the phrase in the Clayton Act, "The relevant line of commerce." Now it doesn't hold together from [fol. 35] an economic standpoint and from a legal standpoint to say that because a product has a peculiar characteristic that it constitutes a line of commerce. It's got to be a peculiar characteristic sufficient to distinguish it from other products so as to constitute a line of commerce and we submit that in this case that the Government is going to be unable to show that aluminum wire and cable has sufficient peculiar characteristics and uses to establish it as a relevant line of commerce within the meaning of that phrase as used and interpreted by the courts.

Now there has been a lot of talk about the dominance of ALCOA and how this dominant company has swallowed up independent producers of wire and cable. Apart from the fact that the producer of wire and cable is still operating at the same old stand and hasn't been swallowed up, the fact of the matter is that this dominant company he talks about which had 90 percent of the aluminum ingot capacity in 1947 and 45 percent of it in 1956 and 35 percent of it now—strong evidence of dominance—and that com-[fol. 36] pany which had 100 percent of the aluminum, the bare wire and the aluminum wire and cable in 1940, and 48 percent in 1954 and 32 percent of it in 1958 and less than that since it acquired Rome is hardly an indicia of dominance as far as I can see, and we will demonstrate in our case this is what happened to ALCOA from the days

when it was the dominant producer in the Aluminum Industry.

Now there are several statements in the decided cases particularly one in the Third Circuit that evidence of size and participation in a substantial share of the line of business involved is not enough to produce a violation of the Clayton Act. This is the Third Circuit's language in Trans America against Board of Governors of the Federal Reserve Board. In that case also the Board made this statement which was cited with approval by the Supreme Court in the General Motors-duPont case:

"A monopoly involves the power to exclude competition when the monopolist desires to do so. Obviously under Section VII it was not necessary to find that the Defendant has actually achieved monopoly power, but merely that the [fol. 37] xxx acquisition under attack has brought it measurably closer to that end." Measurably closer to that end.

"For it is the purpose of the Clayton Act to nip monopoly Since by definition monopoly involves the power to eliminate competition and lessening of competition is clearly relevant to the determination of the existence of a tendency to monopolize. Accordingly in order to determine the existence of a tendency to monopoly in any line of business the area or areas of existing effective competition in which monopoly power might be exercised must first be determined." This is where we are poles apart in this case, and this is one of the major issues that is presented to Your Honor, as to what are appropriate lines of commerce in this case. There is no dispute between us, as Mr. Melchior pointed out, on the section of the country in that we are in agreement that the entire United States is the section of the country. We don't dispute, as a matter of law that there can be a substantial lessening of competition in the eleven Western States. Any appropriate market area in which they can prove that there has been a substantial lessening of competition would be proper [fol. 37a] for Your Honor to act upon. Our position there is that they are not going to be able to prove that the eleven. Western States is a separate area of the country for the purposes of marketing the products involved.

[fol. 38] On the issue of effects as a matter of law again

I don't think there is any real dispute between us. The law says that there must be a reasonable probability that the acquisition will substantially lessen competition or tend to a monopoly. "A reasonable probability" that it will.

Now Your Honor asked Mr. Melchior about subsequent events having something to do with the determination of whether or not the acquisition has had the proscribed effects and whether or not it is proper to consider that.

Under the Proctor & Gamble case in the Federal Trade Commission, the Federal Trade Commission lost the case before the Commission itself. I mean the Federal Trade Commission prosecutors lost the case before the Commission itself. But the Commission sent the case back for a new trial and in sending it back for a new trial the Commission said that it preferred hind sight upon which it can act rather than placing too strong a reliance upon "treacherous conjecture" a the better way to determine the effects of an acquisition.

So they sent it back so that evidence could be introduced as to what had happened in the industry since the ac-[fol. 39] quisition.

Now we will show in our case, and hopefully in the government's case, that what has happened in this industry since the acquisition completely precludes a determination that Alcoa's domination, as it has been called has prevented the growth of independents or that it has aggrandized the position of Alcoa. We will show that it has given Alcoa no power or that the acquisition has had no effect in substantially lessening competition or the tendency to a monopoly.

That one quotation that Mr. Melchior read to you from the Senate Committee report, I have just one comment. He read, and I hope I am quoting him correctly—I will try—that it didn't make any difference whether there was any competition between the acquiring company or the acquired company; that there would be a substantial lessening of competition even though there had been no competition between the acquiring company and the acquired company.

Now that quotation which I am sure is in the legislative history dealt with the question of vertical acquisitions where a supplier of raw materials who did not compete with his customer acquired a customer with, or a substantial market outlet for his products so it would give him a [fol. 40] substantial position with that customer. That would be the type of lessening of competition embraced

by the Act.

Now we submit that in this case while Alcoa did supply aluminum to Rome, that Rome was such an unsubstantial producer of aluminum that the effect of the acquisition in that regard is completely inconsequential. That no one was foreclosed from an appreciable market and that no buyer was prevented from buying anything as a result of such foreclosure.

So that this case comes down, I think, to the question of whether the government can prevail, and they have the burden of proof—Mr. Melchior took that upon himself—and there is no question that he has it—whether the government can prevail on the establishment of a proper line of commerce on the establishment of appropriate sections of the country, and on proof that there is a reasonable probability that there will be a substantial lessening of competition or a tendency to monopoly.

We will adduce evidence to show that the acquisition has had no such effect whatsoever in any of these lines of commerce; that to the extent that there has been an vertically [fol. 41] aspects it has had no appreciable effect upon competition. That so far as the question of the entry to which Mr. Melchior refers, the question of entry or non entry into the aluminum wire and cable business which we say doesn't exist, the insulated aluminum wire and cable business that anybody who can insulate copper can insulate aluminum; can insulate steel; can insulate a piece of string. The art is in insulating. And that anybody who wants to, who is an insulator, can enter the aluminum insulating business.

On the question of acquisitions in this industry, if you take the government's line of commerce, the aluminum wire and cable lines of commerce, we will show that such acquisitions as there were, were insignificant. That in one instance, the acquiring company was ot in the aluminum wire and cable business. It just acquired. It was an aluminum producer and acquired an aluminum wire and cable business. No lessening of competition there.

In the other acquisition that preceded ours the only other one in the aluminum industry, the company involved

was primarily a copper company and the amount of business that they did in aluminum was insignificant.

I think our proof will show that in areas where [fol. 42] even adopting the lines of commerce that the government relies on and they rely primarily on the aluminum wire and cable lines of commerce. They very graciously said when we designated wire and cable as a line of commerce, they said "O.K. we will take that as a line of commerce too" but their heart is in aluminum wire and cable. And we will show that in those lines of commerce there has been no adverse effect on the independents, the independent producers of aluminum wire and cable. There has been no adverse effect on the buyers of aluminum wire. and cable, and there has been no adverse effect on the publik And that under those circumstances it is our position that this acquisition which is not unlawful per se, because if our acquisition were unlawful per se these twelve hundred mergers he referred to from the Federal Trade Commission would have resulted in twelve hundred cases and not the few cases that he has mentioned.

But we will show that this acquisition engaged in by Alcoa for the purpose of diversifying its product line into the insulated wire and cable field was because Alcoa prior to the acquisition was in the insulated wire and cable field in a very, very lined way. Your Honor. A surprisingly [fol. 43] limited way. They didn't have the knowhow. They didn't have the techniques; they didn't have the ability to go into the insulated wire and cable field. And the reasons for the acquisition, which we will show, were not for the purpose of eliminating competition or for the purpose of obtaining a monopoly but for the purpose of getting ourselves into this wire and cable business on which we had—were apprentices and which Alcoa had been for a number of years. And the public we think is not affected by this and no one we think has been hurt by this, and we think we can demonstrate this and it will be-while it is not our burden so to demonstrate I think in meeting the government we will do so.

The Court: Mr. Bergson you just made a statement a moment ago that the purpose was to get info—what business? The purpose of the merger.

Mr. Bergson: Get into the business of insulating wire, a broad line of wire and cables.

Your Honor, prior to the acquisition Alcoa was the producer of bare aluminum cable and a producer of what is known as weather proof line wire, which is the wire that runs from the transmission station—I mean from the distribution stations along to the place where they connect [fol. 44] to the houses. And in the so-called service drop field which is the connection from the wire, from the distribution wire to the home or to the building. Now these were simple, easy constructions. But even simple as they were when Alcoa went into that business it went in by asking Rome to do it for them on a toll conversion basis. They sent the wire to Rome. Rome put the covering on it and then Alcoa sold it.

[fol. 45] But Alcoa felt that it could serve the public better if it were able to offer a broad line of aluminum-I mean a broad line of insulated conductors, and they went out and they looked for companies, and the evidence will show, and I don't know whether they will bring it in, if they den't, we will, they looked for companies, they looked at a half a dozen companies skilled in the insulating field, because it was the belief that Alcoa management that it would take Alcoa years to get the skills necessary to make the wide variety of complex insulated products that Rome makes, because Rome in addition to making the simple constructions that I mentioned makes very, very complicated power cables, instrumentation cables, all sorts of cables which we will show, your Honor, and which require a high degree of skill in insulating, compounding of materials to cover them, neoprene, thermo-plastics, rubber, polyvinyl, all the various coverings that go on, Alcoa had absolutely no prior experience prior to the acquisition except thermo-plastic line wire, and this was the reason for the [fol. 46] acquisition. And we will adduce evidence to show that.

Now, we think that the Government's taking the position, it doesn't make any difference what your purpose was, if you have a good business motive and a non-trade restraining motive in acquiring anything, if the result is that it has an adverse effect on trade, there is a violation nevertheless.

Well, to a certain extent we agree with that, but it is our position that motive illuminates and helps to illuminate the effect. If we acquired Rome, for example, on the theory that Rome was a vicious price-cutter in the industry, we wanted to get them out of the way so they wouldn't be cutting prices, that would be an evil purpose and it would substantially lessen competition, and the Government says that is pertinent information. But if we want to acquire Rome for the purpose of adding to our line of insulated and covered productions, and be able to give a diversified line to our customers, with no intent, no purpose, with utter disregard of whether or not Rome was making the overlap products, as they are called, we weren't [fol. 47] interested in the overlap products, we had all the capacity that we needed for the overlap products, we weren't trying to eliminate a competitor in the overlap. products, we will show Rome wasn't even a vigorous competition in those products, that ALCOA lost practically nobusiness to them as a result of meeting them in the market place in those products, but what ALCOA wanted to do here was to be able to offer to the trade a diversified high quality line of insulated wire and cable products, and it is our position that the line of commerce involved here is not aluminum insulated wire and cable but all insulated wire and cable. That our motive in acquiring them was sound and the effect of our acquiring them was not illegal and was proscribed by Section VII of the Clayton Act. Thank you.

The Court: Gentlemen, it's getting reasonably close to the time to adjourn for the day. I think I will let you

people go until ten o'clock tomorrow morning.

(Whereupon, an adjournment was taken until Tuesday, February 6, 1962, at 10:00 a.m.)

[Title omitted]

#### Civil No. 8030

## Transcript of Hearing-February 6, 1962

[fol. 50] The Court: Gentlemen, there are a couple of things I would like to get straightened out. No. 1, I want to put on the record I appreciate counsel's efforts in pretrial. This case has been pre-tried and the proceedings in this case have accomplished as much as any I have been engaged in. I think counsel deserves a little credit for that

The next thing we run into controversy very often and I wonder if it can't be avoided after the case is over as to the payment of the Judge's copy of the Minutes. I just spoke to Mr. Jordan—I suppose that what they do—I haven't talked to him very much—they generally give me perhaps what is actually the original, first copy. He told me he would not do that here, because I guess he had some troubles yesterday.

Mr. Bergson: He mineographed.

The Court: I guess so. Any copy whether mimeographed or carbon is just as good as the original for me and there is no necessity particularly to give me the original. I wonder if you people can't agree as to the Judge's copy how it is to be handled in regard to payment.

[fol, 51] We had a long controversy in the last long case and I want to avoid that. Why don't you confer this noon and see if you can get it straightened out, to see if you can avoid arguments and opinions a year from now.

All right, I guess the custodian is going to bring a table, but I suppose we can start, can't we? All right.

## OFFERS IN EVIDENCE

Mr. Melchior: I intend to offer some documents so we won't need the witness stand immediately.

May it please the Court, I would like to offer at this time Government Exhibit No. 1 to Government Exhibit No. 50 for identification. These documents have been exchanged by counsel and counsel for Defendant have had an opportunity to make an objection thereto, if so desired. These documents generally relate to papers supplied to the Department of Justice by the Defendants at the time of the merger when the Department was considering this merger under its merger program. In order to keep the record to a minimum it deleted a number of documents and if they are received in evidence, it would be my purpose to [fol. 52] discuss briefly particular ones and point them out to Your Honor.

(GX-1 to GX-50 for identification.)

I offer GX-1 to GX-50 for identification into evidence at this time.

Ar. Bergson: No objection, Your Honor.

The Court: All right. Exhibits 1 to 50 will be received. I believe they have already been marked by the Stenographer.

Mr. Melchior: They have already been marked, Your

Honor:

The Court: All right. Perhaps it would be wise to at least give me a little bit of an outline what they contain.

Mr. Melchior: Yes, Your Honor. The first group would be Government Exhibit No. 1 to 23. These are documents which were submitted to the Department of Justice in response to its letter to Defendants dated February 2, 1959. At that time pursuant to our normal practice we inquired into this merger, and requested that the parties who were concerned supply to us information which we felt to be vital and relevant to a consideration of this merger under Section VII of the Anti-Trust Law.

[fol. 53] This first group of documents came in response to our request and I would like to call Your Honor's attention in particular to certain ones. I don't intend to discuss them fully. I don't think it would be wise since we have a substantial number of documents to introduce. It would be my purpose to introduce these in groups from time to time in order not to spend too much time on the documents.

GX-4 is a document of an advisory nature supplied to ALCOA by Ebasco Services, which is a consulting organization and they offered certain advice to ALCOA in respect to the proposed merger.

GX-5 is the actual agreement of merger.

GX-7 is the ALCOA proposed rules relating to the exchange of stock with certain statements therein of interest indicating ALCOA's position as to pioneering in the field of aluminum conductor and pointing out that the merger will give ALCOA a full line of products.

GX-9 is a proxy statement in connection with the SEC, the Securities Exchange Commission consideration and this document is replete with information relating to the two [fol. 54] companies and the products they manufacture and

their activities in the field of wire and cable.

GX-11 to GX-22 are annual reports of the two major companies for the years prior to the merger.

As in the case of most annual reports of large concerns they contain quite a bit of information relevant to the company's activities.

GX-23 is a series of answers to questions posed by the

Department of Justice in its letter of inquiry.

GX-24 to GX-35 inclusive are a series of documents which were submitted by the parties to the Department of Justice in response to the Department's second letter of inquiry. These letters were dated August 18 & 19th, 1959. The fact that there was a second submission indicated that the Department wanted additional information with respect to the merger.

GX-27 contains various statistics of concern in the merger.

GX-28 to 31 relate to a tolling arrangement between ALCOA and Rome Cable prior to the acquisition. Under this arrangement generally ALCOA who was manufacturing bare aluminum wire and cable had Rome Cable per-[fol. 55] form certain services upon this cable by insulating the cable. As the documents indicate the cable remained the property of ALCOA and was sold by ALCOA.

As counsel for ALCOA yesterday indicated this was a service performed by Rome Cable Company, a company with a great deal of know-how in this field and apparently a field in which ALCOA, according to counsel, would take perhaps as much as five years in order to learn how to perform the same operation itself adequately. We think this is very significant because it does indicate the competitive importance of the know-how that Rome Cable had in the insulating field which ALCOA did not have and ap-

parently felt necessary to have performed for it by Rome Cable.

GX-34---

Mr. Bergson: May I interrupt?

The Court: Yes.

Mr. Bergson: I don't mind, but I do think it is questionable for him to interpret the documents and argue from the documents as he has.

The Court: Well, I will have forgotten the argument

[fol. 56] long before I ever decide the case.

Mr. Bergson: We know that copy that you asked us to

arrange and pay for.

Mr. Melchior: May it please the Court, it was not my intention to argue. I was just referring to some arguments made by Counsel yesterday.

GX-34 relates to a somewhat similar arrangement between ALCOA and Rea Magnet Wire Company, a company later acquired by ALCOA and mentioned in the Government's complaint in this proceeding.

GX-37 to 43 generally relate to practical problems of manufacturing aluminum and copper rod on the same production machinery. GX-32 is a document entitled "The [fol. 57] Rome Technical Manual" and it contains a wide variety of technical information relating to aluminum and copper and their several and significant characteristics.

GX-36 to 46 are documents which were secured by the Government from ALCOA in connection with the acquisition by ALCOA of the Rea Magnet Wire Company. GX-36 in particular is the telegram of inquiry. GX-37 is the agreement of sale. GX-38 deals generally with the Rea Magnet Wire Company. GX-39 relates to a series of financial date concerning Rea. GX-40 is the proxy statement submitted to the S.E.C. and as in the case of Rome and ALCOA proxy statement contains a great deal of relevant information.

Mr. Bergson: Your Honor, I don't like to interrupt but I think that is a misdescription of the document. It's not important but it was just a letter to stockholders. I don't think it was submitted to the S.E.C.

Mr. Melchior: Well, my notes indicate that it was a proxy statement. Counsel may be right. I don't think it's really that significant.

[fol. 58] Mr. Bergson: No, I don't either.

Mr. Melchior: I will pass it now. GX-41 is an announcement made by ALCOA of the purchase of the Rea Magnet Wire Company and there are certain quotes of interest in that letter. It indicates that ALCOA's desire was to make Rea the industry leader in the aluminum magnet wire field and I quote: "We do anticipate that your" meaning Rea "experience in the magnet wire field and our know-how in the properties of aluminum can be combined through aggressive, research into leadership in the development and utilization of aluminum magnet wire in those applications where aluminum is equal or superior to copper." It also indicates that ALCOA felt that both Rome and ALCOA were research-minded companies.

The final group GX-47 to GX-51, these are various informal submissions submitted by the parties to the Government. GX-47 we would like to call to the Court's attention in particular since it is Rome Cable Corporation's—I would like to correct my statement there. I indicated 47 to 51, it is actually 47 to 50. We are not offering 51 [fol. 59] at this time. GX-47 is Rome Cable Corporation's annual report for the year 1937. The year near the time of the founding of the company and it shows or gives the Court an opportunity to compare the growth of Rome Cable Company ip to the time of the merger.

GX-49 is ALCOA's 1960 annual report. This is an interesting document in that that it discusses the way in which aluminum and aluminum electrical conductors are made and where ALCOA's plants and other operations are located.

The final document is GX-50 which is generally known as the Ashley Report. This report was prepared by a firm of consulting engineers for and at the request of ALCOA for use in promoting the usage of aluminum electrical conductor products. It covers generally such items as: 1, differences in the physical and electrical characteristics of aluminum and copper; 2, the different prices of these two metals; 3, the differences between aluminum and copper conductors; and 4, the differences between aluminum and steel conduit.

The Court: Are you finished with that?

[fol. 60] Mr. Melchior: With that group, yes, Your Honor.

The Court: I think I will let Mr. Bergson make any comment he wishes to. I don't know whether it is necessary or not in connection with counsel's statement in the opening on those Exhibits.

Mr. Bergson: I don't think it is necessary, Your Honor. Anything we want to say we can say in argument or in rebuttal when we put our testimony in.

The Court: All right.

Mr. Melchior: I would like to offer at this time Defendant's answers to Government interrogatories which were served upon Defendant in two series. The first series came on or about June 21, 1960. The second one on or about December 21, 1960. We are offering those with the following exceptions—we have deleted the following interrogatory answers because of their bulk and questionable utility in this proceeding, but we would like to reserve the right to introduce them at a later date if the occasion may warrant. The interrogatory answers that are not being [fol. 61] introduced or offered at this time are interrogatories Nos. 10, 11, 31, 59, 67, 68. The Government is prepared to call its first witness.

Mr. Bergson: No objection.

The Court: All right. Now those answers, Mr. Melchior, were not given an Exhibit No., were they?

Mr. Melchior: No, we did not give them an Exhibit No. The Court: All right.

Kenneth B. Highe, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Melchior:

Q. Would you state your name and place of employment?
A. I am Kenneth B. Higbie. I am employed by the United States Bureau of Mines, Washington, D.C.

Q. Would you state the title of your position and the location of your position in the organization.

A. I am a Commodity Specialist in the branch of nonferrous metals. My particular responsibility is to the commodity aluminum and its associated materials bauxite and alumina. You will find I will be referring to alumina and aluminum. Alumina is aluminum oxide and aluminum [fol. 62] is a metal obviously. I will try to keep it as distinguishable as possible.

Q. Is your place of employment a Government Agency?

A. Yes, it is a Government Agency.

Q. Would you identify it?

A. Department of the Interior.

Q. Is it a particular bureau within the Department of the Interior?

A. Bureau of Mines.

Q. Bureau of Mines. How long have you been employed by the Bureau of Mines?

A. Approximately ten years.

Q. Has all of your employment been in the field of non-ferrous metals?

A. Yes.

Q. What are non-ferrous metals?

A. This is a group of metals that in the periodic chart is not related to iron. Nickel. Cobalt. These are light metals, refractory metals, such metals as aluminum, magnesium, tin, copper; and refractory metals, tantalum, collumbium:

[fol. 63] Q. Have you had any prior experience in the field of non ferrous metals prior to your being employed with the Bureau of Mines?

A. In addition to my Bureau of Mines experience I spent approximately five years with the beryllium industry, an additional light metal, working for the Beryllium Company in Reading, Pennsylvania.

Q. Mr. Higbie, what is your educational background?

A. I have a Bachelor of Science degree from Oregon State College with a major in chemical engineering.

Q. Have you ever written any professional papers in the field of non-ferrous metals?

A. Yes. I have approximately two dozen papers on various subject matter pertaining to non-ferrous metals. This would include other beryllium, zirconium, hafnium, columbium, tantalum and some associated papers on aluminum, now.

Q. What are the duties and responsibilities of your pres-

ent position?

A. The Bureau of Mine- has been charged with the responsibility of assisting in the development of domestic natural resources. In part, in this program the Bureau has research programs projects being carried out in various bureau research locations pertaining to mining ore extraction of the ore, reduction of the valuable material [fol. 64] in the ore to a metal and the purification of the metal. We have been following through to the point where the metal loses its identity in fabrication.

My particular office is the focal point for all of our aluminum programs. Any product programs that may be developed in the field may be submitted to the Washington office for their comments, for their criticism, are they pertinent to the national interest, and if they are, then it is my office that carries out the necessary details to see that such a program is actually taken place or will take place. My office also acts as a focal point for the procurement of information, statistical information on the aluminum, alumina and bauxite industries. We have a group of statistical clerks that send out and receive monthly canvasses on certain phases of this industry.

Q. Mr. Higbie, through your education and experience are you generally familiar with the location of mines and

other facilities in the aluminum industry.

A. I believe I am..

Q. Are you generally familiar with the processes used in mining and ore processing?

A. Yes.

Q. Now, are you generally familiar with the companies [fol. 65] engaged in these processes and in the various stages of smelting and refining to the point where these metals lose their identity in fabrication?

A. I have this understanding.

Q. Are you generally familiar with any of the trade associations in the field of aluminum?

A. Yes.

Q. Would you identify any of the trade associations in the field of aluminum with which you are familiar?

A. Basically there are two organizations think that fit this field. The Aluminum Association which is primarily

interested in the primary metal as produced by the primary producers and the Aluminum Smelters Research Institute which consists of several, approximately 15 secondary aluminum industries where so-called secondary metal is made. They are interested in the later phase of the metal industry.

Q. Mr. Higbie, would you state what are the basic stages .

involved in the production of aluminum metal?

A. I would consider that there are three basic stages in this operation. One would be the mining of the ore; two would be extraction of the valuable aluminum oxide from the ore; and then three would be the reduction of aluminum oxide to aluminum metal. So that first we have the ore itself. Then we have an intermediate product, [fol. 66] which is the oxide, and then finally the metal itself. I think we will call it mining, extraction and reduction.

Q. You say it has three stages, mining, extraction and reduction. Now, Mr. Higbie, I wonder if you would explain to us generally what is involved in mining of the bauxite, where the bauxite ore may be found, and generally the processes utilized in mining bauxite up to the second stage which you have called the extraction stage?

A. This industry is rather fortunate in that raw materials containing aluminum are quite abundant. Statistically it has been stated that aluminum materials compose approximately 8 per cent of the earth's surface. They vary in nature and chemical composition, but bauxite has been considered the primary commercial source. Bauxite is a name for a group of minerals, all of which contain varying percentages of aluminum oxide and water. Waters of hydrogen. Generally speaking, it will be the chemical formula of AL 203.3 H2O or AL 303.1 H2O.

Bauxite is found throughout the world. Our domestic industry utilizes bauxite primarily from the Caribbean in such locations as Jamaica, Haiti. Also from the north coast of South America, Surinam, British Columbia. There are other deposits throughout the world in Australia, In-[fol. 67] dia, Sumatra, Greece, France. It is fairly well distributed.

The United States has also deposits located in Arkansas, Alabama, Georgia. To give you an idea of how much was mined last year, somewhat close to 28 million tons of bauxite was mined throughout the world. The United States mined 1.2 million. So you see we are not very large in production. We imported approximately 8.7 million. We imported primarily from the Caribbean and the north coast of South America, the first areas I quoted.

Q. Mr. Higbie, can you give us some idea as to the ore content, the metal content and the ore process and the type of ore and the type of structure in which the ore bodies

may be found?

A. A reasonable commercial grade ore is one that is considered to have approximately 46 to 40 per cent aluminum oxide in it. A good grade would be something in the 50s, and it has been known to go as far as 60 per cent aluminum oxide.

Q. Have you completed your answer?

A. I think that will cover what you asked.

Q. Now, where does the mining stage end? You have divided the processes into three stages, mining, extraction

and reduction. Where does the mining stage end?

- [fol. 68] A. I think I should say that most of the bauxite is found on the surface of the ground. The mining stage would end after the material is recovered from the ground and is transported to an intermediate plant where it may be dried for shipment. Since we are considering that most of our material is imported the water content of this ore is very valuable as far as weight is concerned, the economics of shipping water is such that it should not be shipped so that there is a plant located at all, I would say all of the mining areas designed to dry the ore as it comes from the ground prior to shipment to the U.S. I would consider that would be the end of the mining stage. I think if it would help the Court, I have prepared a small flow diagram that would show the two different steps and perhaps might be easier to follow in my testimony.
  - Q. Do you have copies for counsel?
  - A. I have two copies. One for counsel.

Mr. Melchior: Counsel, it is not my intention to mark this at all.

Mr. Bergeon: I have no objection.

Mr. Melchior: If you have no objection.

Mr. Bergson: I wondered about the relevancy of all this

testimony.

[fol. 69] Mr. Melchior: I would explain that, if Your Honor so desires. Our purpose in having this witness and the one to follow was to try to get as good and straightforward background information as possible. We selected these gentlemen from the Bureau of Mines because we didn't feel that there would be any slant or bias expressed as far as the testimony is concerned. I think it will also help the Court in understanding the products and where they came from.

By Mr. Melchior:

Q. Now, I believe you said the second stage was the extraction stage, Mr. Higbie; is that correct?

A. Yes.

Q. Will you describe generally what is involved in that stage?

A. The dry bauxite-

Q. May I preface this. Mr. Higbie, I don't think it will be necessary for you to go in greater detail on this. If you [fol. 70] would just give us a quick run-down so we can

understand what happens.

A. The dry bauxite that is shipped into the country is sent to an extraction plant where the material is combined with several chemicals and then the entire mass permitted to digest under high temperature and high pressure for a reasonable length of time, at which time the chemical action takes place in the aluminum oxide, which is tied up in the material, becomes a water soluble content. The impurities tend to remain as unaffected material or as water insoluble compounds. This digested product is then filtered to remove the water soluble material. The solution is sent to a holding tank where it is allowed to crystalize and we obtain a hydrated alumina which is now a much purer form of aluminum oxide. This hydrated alumina is calcined to form aluminum oxide and we now have something which ranges in purity to greater than 99 per cent pure. This is called the Bayer process, where we have converted an impure aluminum oxide to a pure aluminum oxide and we have

separated it from its minerals. Basically that is the general step.

Q. And the end product of the second step is what?

A. An aluminum oxide powder, a white powder.

[fol. 71] Q. Now would you briefly describe what takes

place on the third step?

A. This step as I have labeled the electrolytic reduction is the means by which the aluminum that is tied up in the oxide can be freed to form a metal oxide, it is electrolytic. It has a cell approximately 20 feet long by 10 feet wide by about three feet deep. Very large cells. So constructed that a bath of molten cryolite is used as the electrolyte. In the electrolysis the electricity causes the aluminum, which is in the aluminum oxide and which is dissolved in the cryolite, to become free to form small molten globules and separate away from this molten bath of cryolite. It separates to the extent that since it is a heavier metal in the salt and the cryolite it sinks to the bottom, and by a siphoning technique the aluminum, which is at the bottom, can be siphoned out and recovered as primary aluminum. metal then as it is siphoned out into some sort of ladle can be sent to the furnace or can be cast directly into metal ingots for shipment to the customer. The purity of this metal may not be exactly that which the customer requires; therefore, very often it is sent to what we call a remelt furnace where certain metals are added to form the specific alloys. That alloy material then can be cast into a specific size ingot and shipped to the customer.

[fol. 72] Q. You used the term "primary aluminum" in your testimony, Mr. Higbie. Will you state for the record

what primary aluminum is?

A. Primary aluminum is the first metal that is produced from the ore. It is the electrolytic product. If have used the term secondary aluminum. This is an aluminum metal that comes from reclaiming scrap; remelting scrap in such a manner that the final product will be usable. In primary aluminum there is very little or no scrap utilized unless it happens to be within the plant itself.

Q. Can you tell us in what form primary aluminum comes, in what shape or form or how do you describe or is there a name applied to primary aluminum as far as the shape or form is concerned?

A. It is cast into 50 pound ingots. It might be cast into larger ingots, rectangular ingots if it is going to be rolled into sheet. As I understand it, it is generally cast into 50 pound ingots, which is approximately 30 inches long by about five inches wide by four inches high and it is then shipped to the customer.

Q. And this shape is the primary aluminum?

A. Yes. This is primary aluminum.

Q. The basic metal that results from your third stage then, the reduction stage, is that correct?

A. Yes. This would be the basic form.

[fol. 73] Q. Before the inget is fabricated into fabricated aluminum products does it take on other shapes or forms? Are other shapes or forms made from this into consumer items?

A. It is, I think, normal practice to cast into an ingot size that is comparable to whatever your final product would be. If you are going to make sheet you would prefer to cast into a large rectangular type ingot. If you are going to make rod, perhaps wire, you would cast into a round cylindrical type ingot. The length and size of the ingots, I think, would be dependent upon the lenth and size of the final product. Obviously it is difficult to combine two ingots once they have been fabricated, unless you use a welding technique later on, so that if a long sheet is required you would cast a larger rectangular ingot than a short sheet.

Q. Do you know what shape is generally used for the fabrication of wire and cable products in aluminum?

A. I believe a round cylindrical type.

Mr. Melchior: No further questions at this time. Your witness.

Mr. Bergson: No Cross Examination.

ALBERT D. McMahon called as a witness in behalf of the Government, being first duly sworn, testified as follows:

[fol. 74] Direct examination.

#### By Mr. Melchior:

Q. Would you state your name and place of employment?

A. My name is Albert D. McMahon: I am a copper specialist at the Bureau of Mines in the Department of the Interior.

<sup>o</sup>Q. Would you describe your position with relation to this organization?

A. In a like manner I have responsibility for the Bureau's interest in copper.

Q. You have heard Mr. Higbie's testimony?

A. That's right, sir.

Q. Are you Mr. Higbie's counterpart in the Bureau of Mines as a coper commodity specialist?

A. That is true.

Q. Does that describe your position?

A. Yes.

Q. How long have you been in your present job, Mr. McMahon?

A. Since January, 1957.

Q. Would you briefly describe what your prior experience has been in the field of non-ferrous metals?

A. Prior to my tenure with the Bureau of Mines I was with the Defense Minerals Exploration Administration, where we dealt in drawing of contracts for the exploration [fol. 75] of various minerals in the United States. Prior to that I was with the General Services Administration as a Resident Engineer at the Nickel Smelter at Riddle, Oregon. After that I was in the Materials Division of the Munitions Board, in the Department of Defense. Before that I was engaged in engineering responsibilities with the Metals Reserve Company. With the R.F.C. and before that I was with the Anaconda Copper.

Q. Mr. McMahon, would you state your educational background?

- A. I have a Bachelor of Science Degree in metallurgy from Montana School of Mines.
- Q. I believe you stated your duties in the copper field were approximately the same as Mr. Higbie's in the aluminum field, so I will not inquire into that. Now through your education and experience are you generally familiar with the location of mines and other facilities in the copper industry?

A. Yes, sir.

Q. Are you generally familiar with the processes used in the mining and ore processing in the copper field?

A. Yes, sir.

Q. Are you generally familiar with companies engaged and the processes used in the various steps of smelting and refining the copper ore?

A. Yes.

[fol. 76] Q. Are you generally familiar with trade associations in the field of copper, if there are any?

A. Yes, I am familiar with some.

Q. Would you state those with which you are generally familiar?

A. I am thinking of the Copper and Brass Research Association. Copper Products Development Association. And these are primary research and market analysis organizations. And Waste, Trade and Materials Dealers is a secondary association of secondary producers. These are the ones I have some familiarity with.

Q. Are these associations concerned with copper?

A. Yes.

Q. Are they concerned with aluminum also?

A. Secondary producers are, yes.

Q. Secondary producers are. Are you generally familiar with the pricing practices of the industry as recorded by the various publications in the field?

A. Yes.

Q. Would you state for the record generally where the prices for copper are reported—the various reporting agencies, if there are any such agencies?

A. Prices are quoted principally by,—let's see—prices are announced by the major producers, what we call the producer's price, the quoted price, and this here [fol. 77] is quoted in our trade publications as the Ameri-

can Metal Market, the Engineers Mining Journal, foreign publications such as the British Metal Bulletin, and the prices are quoted in all daily papers.

Q. Are you referring to the producer's price only, now?

A. Producer's price. Right.

Q. Is there any other?

A. I said the producer's price. Also in the American Metal Market, E.M.J. You also have the London Metal Exchange price quoted. And what we used to call the Congo price. It gives a price at destination of the Congo copper.

Q. Now these reported prices that you are referring to, are these the reported prices of primary copper or are they the reported prices of secondary copper, or various stages of copper?

A. The prices I mentioned are the prices of electrolytic

copper in wire bar form.

Q. Wire bar form. Now are these prices as reported by these various groups generally the same or do they vary from time to time as between the various reporting agencies?

A. The producer's price is very stable.

Mr. Bergson: I don't think that was the question.

[fol. 78] Mr. Melchior: Do you have a question, counsel?

Did you wish to make an objection?

Mr. Bergson: I am sorry. I don't think the answer is

responsive to the question.

The Witness: Well, he asked me if there was any difference in the prices as quoted. I said our producer's price is stable. The L.M.E. price fluctuates.

Mr. Bergson: L.M.E.?

The Witness: London Metal Exchange price. And it is sensitive to fluctuation.

Q. Your L.M.E. price you are referring to, this is a price for primary copper. Correct?

A. Yes.

Q. And this is quoted in London, England. Is that correct?

A. Yes.

Q. Did you characterize this price in some fashion? I didn't hear your characterization of this price. Did you say this was a stable price or a fluctuating price?

A. No, you asked me the difference in prices and I mentioned the L.M.E. price before. I mentioned the producer's price. I just merely wanted to state that the producer's price has been stable. The L.M.E. price fluctuates.

[fol. 79] Q. Is there any relationship between changes in price on the L.M.E. and the domestic producer's price from your observation of the daily reports in the newspapers

and trade publications?

A. As the variation becomes pronounced there is a tendency for the other to follow. In other words, if the L.M.E. price drops say more than two cents below the producer's price, our producer's price becomes soft and is liable to change.

Q. Now, directing your attention, Mr. McMahon, to the production of copper from its ore are there generally recognized in the trade stages involved in the production of copper?

A. Yes, indeed.

Q. Would you name these stages that are recognized?

A. Generally we speak of copper ore—the production stages for copper—as mining, concentration, smelting, and refining.

Q. Four stages?

A. Four stages.

Q. Now would you describe very generally what is involved in the mining of the copper ore? Tell us where the ore is generally found, some of the characteristics of the copper mines, and the location of some of these ore

bodies, just as a general matter, very briefly.

[fol. 80] A. Our reported production in the world comes from 45 countries. Out of this 26 countries produce in excess of ten thousand tons; eight produce more than one-hundred thousand tons; and only one produces more than a million tons, that is the United States. In the various countries the ore is concentrated in certain portions of the country. The ore bodies are associated with geology, with igneous intrusions. So this tends to concentrate them in certain parts of the country. Eight countries in the world produce 88 percent of all the copper. The United States produces 24 percent, and in the United States, almost all of our copper is produced in five western states, and most of that in the State of Arizona. In the United States

in the year 1960 we mined 135 million tons of copper averaging less than three-quarters of one percent copper. This gave us a primary copper production of one-million one-hundred thousand tons. Most of the copper mined in the United States comes from open pits. Open pits are exploits of ore deposits that are close to the surface or where it is economically feasible to mine the ore without the removing of too much over-burden. The balance of the copper in the United States is mined by mass producing underground methods such as blockading and pillar methods. Open pit mining is the extraction of ore by blasting, the use of shovels, railroads and trucks. Open pit minifol. 81] ing accounts for 80 percent of the production of ore, and 75 percent of the production of copper in this country.

Q. Are you now prepared to go to the second stage, which I believe is concentration?

A. Concentration.

Q. The second stage you have described as concentration, I believe. Would you briefly tell us what that involves?

A. Over 90 percent of the ore occurs as sulphite. Sulphites are treated by the floatation process which separates the sulphite minerals from the gas. In this concentration, of course, is crushing, grinding, classification, floatation, thickening, and filtering. And the product is ready for smelting.

Q. What is that product called?

A. Concentrated copper. Copper concentrate.

Q. The third stage you have described as smelting where a process is performed upon these concentrates. Is that correct?

A. Yes.

Q. Would you briefly describe the smelting stage?

A. The smelting stage consists of three steps; roasting, reverberation, smelting and converting. Roasting is employed to get rid of a portion of the sulphur. Reverberatory smelting melts directly the concentrates which separates the moiten mass into slag and mat.

[fol. 82] • Mat is a mixture of iron sulphate and iron sulphide. It is tapped from the reverberatory furnace and to the converters. In the converters air is blown through the molten mass. The air converts the iron and the iron

sulphate to iron oxide which combines with silicon and blocks out, the silicon, and this goes off as a slag. The sulphur from the copper sulphate combines with oxide, goes off as a gas and leaves the copper, copper metal in the converter, and this is what you call converter copper of blister copper.

Q. So would you understand that the product would be

such as you would describe as blister copper?

A. Yes.

Q. Now, we are ready for the fourth stage which you described as refining. Would you briefly describe that

stage?

A. The molten operation of the blister copper produced is fire refined and this is a process in which air is introduced into the melt which oxidizes the impurities that are slagged off. Then it is poled with large wooden poles and the products of combustion that is the harder carbons and the carbons which form from the burning of the poles reduces the oxidation in the melt, and this refines your copper to 99.9 per cent.

[fol. 83] Q. And what is this product described as?

A. This is first refined copper. This is first refined copper. 92 per cent of the blister copper product is treated by an electrolytic process, the copper leaving the converter goes to a homing furnace which it is cast into anodes. The anodes along with the cathode are immersed in a bath of acidified copper sulphate. When a current is passed through the cell the copper precipitates from the, or rather the copper goes into solution from the anode and deposits on the cathode, the impurities fall to the bottom or are dissolved in the electrode and your cathode deposit is brought the term electrolytic refined copper.

Q. And the name of the product that results from the electrolytic process of the refining such as you describe is what!

A. This electrolytic product is referred to as cathode copper.

Q. What shape is the cathode copper?

A. Cathode copper is in a flat. It is a deposit about 3 foot by 3 foot. This is melted and goes into various shapes of various properties, cakes, slabs, ingots and ingot bars and these are the shapes that are taken off for fabrication.

[fol. 84] Q. Do you know which of these shapes are used in drawing copper wire and cable?

· A. Wire bars.

Q. Do you know the approximate electrolytic product that is produced that goes into the form of wire bar?

A. All the refined copper in 1960, that was produced in 1960, 66 per cent went into wire bar.

Mr. Melchior: You may examine.

Mr. Bergson: No cross-examination.

(Witness excused.)

Mr. Mahaffie: John G. Detwiler.

JOHN G. DETWILER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Mahaffie:

Q. Mr. Detwiler, will you state your occupation, please, sir?

A. I am president and treasurer of the Central Cable Corporation.

Q. Where is the Central Cable Corporation located?

A. The main office is in Jersey Shore, Pennsylvania. We have plants in Illinois and Georgia.

Q. Illinois and Georgia? [fol. 85] A. That's right.

Q. How long have you been with the Central Cable Corporation, Mr. Detwiler?

A. Since it started, in 1939.

Q. In what capacity, sir?

A. Always as an officer. First as a vice-president and then my present capacity.

Q. When did you become president?

A. In 1946.

Q. You have been president of the Central Cable Corporation since 1946, sir?

A. Correct.

Q. Mr. Detwiler, what are the products which are produced by the Central Cable Corporation, generally speaking, sir?

A. We produce transmission and distribution wires and cables for the transmission and distribution of electrical

energy.

Q. Now, would you so list the specific products which are included within your product line by the names by which

they are usually called in the trade?

A. Wire aluminum, bare aluminum and copper wire and stranded cable. We make insulated aluminum and copper wires; insulated in many ways with cotton and asphalt, [fol. 86] plastics, synthetic rubbers, et cetera, and then we make composition cable which also include aluminum and steel reinforcement, which is called ACSR in the trade.

Q. All right, will you state what ACSR is specifically?

A. Those four letters which stand for aluminum cable steel reinforced.

Q. And how is that product made, sir?

A. Are you asking the long, technical description?

Q. No, sir.

A. It is made by twisting aluminum conductor wires called strand conductor around galvanized or aluminized steel core wire.

Q. What is it used for?

A. It is used for the transmission of electrical energy.

Q. Is it sold in bare form or covered form?

A. Both, but largely in bare form.

Q. All right, sir, you sell a product known as all aluminum cable?

A. Yes, we do.

Q. What is that, sir?

A. That is all aluminum or alloys stranded together with steel wire.

Q. What is that used for, Mr. Detwiler?

A. Same purpose. Transmission of electrical energy.

Q. Same purpose as ACSR?

[fol. 87] A. Same purpose as ACSR.

Q. Do you produce a product known as line wire?

A. Yes, we do.

Q. All right, sir, what is line wire?

A. Line wire in general is bare or insulated single con-

ductor. In other words, it is a single or stranded single unit conductor which carries electricity from one place to another.

Q. What metals do you make line wire out of, sir?

A. Copper or aluminum or ACSR.

- Q. Now, do you sell, produce a product, a line wire product made of copper which is sold bare, that is; without a covering?
  - A. Yes.

Q. And what is the use of that product, sir?

A. It also transmits electrical energy but it can be used for signal wires and other purposes, other than the transmission of power,

Q. What is its principal use?

A. It is principally used as a transmission of electrical energy.

Q. Do you produce a covered line wire product?

A. Yes, we do.

Q. What metals are used in that product?

A. The same copper and aluminum or ACSR.

[fol. 88] Q. And what covering materials are used?

A. The original old-fashioned weatherproof covering with a braided cotton covering which was then saturated with asphalt to be able to stand the weather better, finished with wax and mica. That was substituted with polyethylene and also neoprene, a rubber-like material so that all this figures in that construction.

Q. Do you make this product with all three of these types covering?

A. Yes, we do.

Q. What would you say the percentage of each of them on covering in your product is?

A. I couldn't answer that offhand. It varies from year to year.

Q. How much cotton covered line wire is used today?

A. It is a declining market. I would hesitate to say how much of it is, but it is a declining market. It is an old-fashioned product.

- Q. All right, sir, do you produce a product known as service drop cable?
  - A. We do.
  - Q. What is that, sir?

A. That is a composite cable generally used to bring low voltage distribution electricity from a higher voltage [fol. 89] line into your house or into this building, above the ground.

Q. How is it made?

A. It is made by combining plastic or rubber insulated conductors together with bare conductor generally twisted together into a form called triplex, duplex or quadruplex, depending on whether there are two, three or four conductors.

Q. Now you stated that you make conductor products using both aluminum and copper. In the field of aluminum

what kind or grade of aluminum do you buy?

A. It is known in the trade as E.C. which translated is electrical conductor grade.

Q. Do you buy any secondary aluminum?

A. Not for this product. It is impossible to use it.

Q. The reason that you do not buy it is that you cannot use it?

A. Yes, it won't meet the specifications, sir.

Q. Do you buy secondary copper?

A. Yes.

Q. For the reason that you can use secondary copper?

A. It can be made to meet the specifications.

Q. All right, sir, and what form does Central Cable buy aluminum?

A. We buy aluminum in the form of a rod, which is our

[fol. 90] starting product.

Q. What is an aluminum rod, Mr. Detwiler? What does

it look like?

A. Well, it is about the size of your index finger indiameter and it is called 3% of an inch diameter. Normally it is wound up in a coil about the size of this table, weighs about 250 pounds in the coil.

Q. How is aluminum rod made?

A. There are two methods. Generally one by rolling an ingot on a rolling mill and then there are various continuous casting methods that are more or less successful in producing these rods.

Q. The original form from which the rod is made is an

aluminum ingot?

A. It would be an ingot for the rolled rod. I guess they

would call it an ingot, in the direct casting method, but I am not sure of that.

Q. In what form does Central buy copper?

A. We buy copper in the rod form as I described, and also in the open market in the form of a wire as heretofore described by the witnesses.

Q. You buy both copper rod and copper wire?

A. Yes.

Q. What does copper rod look like?

A. It looks like as big around as your finger and it is [fol. 91] rolled in a coil as high as this table and weighs about 250 pounds in that form.

Q. How is copper rod made?

A. It is normally rolled on a hot rolling mill.

Q. From what product?

A. From the wire bar.

Q. From the wire bar. Mr. Detwiler, are there any differences in buying copper as compared with buying aluminum?

A. There is no commodity way for copper as I know of. By that I mean the London Metal Exchange or New York Commodity Exchange, so we must buy copper from producers or secondary producers. While in aluminum we have to buy it directly from the producer of the metal, as they don't have the other sources available.

Q. There is then a difference in source; is that right?

A. Yes.

Q. Now, you said that there were no secondary sources of copper. You meant aluminum, didn't you?

A. There are no secondary sources of aluminum.

• Q. Is there a difference in the number of prices at which you can buy aluminum as compared with copper, the number of different prices, if any?

A. There are prices on various world markets for copper in the form of wire bars and other shapes which [fol. 92] provide a variation in pricing on copper.

Q. They are different?

A. They are different. Generally they are different.

Q. Yes.

A. There is generally for us one market price for aluminum rod that we can buy and use.

Q. Now, is there a difference in the terms and conditions

if they are available to you between buying aluminum and

buying copper?

A. In aluminum we are only able to purchase our requirements of rod at a price in effect the date I take them. In copper it is possible for me to buy future deliveries of copper so that I can at a price known today buy copper at a later date, at a price that I can afford and pay for.

Q. Did you say that is not true in aluminum?.

A. To my knowledge that is not true in aluminum.

Q. Mr. Detwiler, will you describe the manufacturing processes involved in converting aluminum rod into aluminum wire?

A. This is a process in our operation known as cold drawing stranding and insulating. We introduce the rod into the draw bench and draw it down in smaller and smaller diameters from the three-eighth rod to the re[fol. 93] quired size of wire, through tungsten carbide dies made so that the diameters come out the way we want the wire at the end. This is done on high speed, and we can then sell that wire at that diameter, strand or insulated.

Q. What is a draw bench, Mr. Detwiler?

A. A draw bench is a heavy base mechanical equipment driven by electric motor which has a very specialized gearing and drive and serves to pull by means of the power motor, serves to pull the aluminum wire through various diameter dies that we inserted in the proper places in the bench.

Q. Now, what is the manufacturing process involved in converting the copper rod into copper wire?

A. Exactly the same.

Q. Can the same machine be used for both conversion

operations?

A. We use the same machine. After a while you are developing enough volume to put a faster machine on aluminum. But you can use the same machinery.

Q. Do you use the same machinery?

A. We don't today.

Q. Why not, sir?

A. We need to make aluminum wire at a higher rate of [fol. 94] speed than we are making the copper in order to get the proper physical properties and so forth.

Q. What are the differences, if any, between drawing

copper and drawing aluminum in a draw bench?

A. In the first place, the speed I mentioned can be higher in aluminum and get the required physical and electrical properties. In the second place the lubricant that you use to draw the aluminum is essentially different. Normally, it is a soluble oil for aluminum. With copper we use a fat or tallow solution, an animal fat solution. We have a temperature control in this solution on aluminum because of the speeds, which we don't have to have on the copper. But we can do it generally with the same process except for speed and lubrication.

Q. What about the dies?

A. The dies are the same—tungsten carbide dies are the same—tungsten carbide dies are used commonly.

Q. If you changed the machine from the drawing of copper to the drawing of aluminum what changes would

you make in the machine?

A. Normally this involves cleaning the entire machinery and associated piping with steam or some other method to remove the particles of the previous metal that would [fol. 95] have been drawing.

Q. Why is it necessary to do that, sir!

A. Well, in general these two metals are in a different place than the electromotive series and it would cause corrosion if one appeared on the other out in the atmosphere, so you must keep that from happening.

Q. If you did switch the machine over, would you make

any change in the dies in the machine itself?

A. As a practical matter you would put some different dies in, but you can leave the same in, if you don't know any better.

Q. All right, sir, would you describe the manufacturing

process involved in converting wire into ACSR?

A. Yes. In that case we draw the wire as described and we also produce the steel core wire with appropriate galvanized or aluminized coating and then we put these aluminum and steel wires in a machine called a strander and we straud that with the aluminum on the outside and the steel core wire in the center.

Q. What operation is involved in making stranded cable other than ACSR?

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A. Aluminum!

Q. Aluminum or copper.

Q. You will eliminate the core wire and strand the metals in the strander without that particular steel [fol. 96] core.

Q. If you change the stranding machine from stranding of aluminum to the stranding copper, what, if anything,

would be necessary!

A. There, again, we have to clean the machine very carefully with steam or some other solvent to remove the particles which are already contained therein.

Q. What manufacturing process is involved in the pro-

duction of covered line wire?

A. There are three general processes. The oldest, 75 years or more old, being a cotton asphalt covering which I have described.

Q. Yes, sir.

A. And then there are thermo plastic coverings which are newer, which consist of extruding of the polyethylene or other thermo plastic on the outside of the wire much the same as if you would put a hose on the outside of the wire.

And the third is a continued vulcanizing operation which looks very much the same as a plastic extruder, but you use a material such as neoprene or synthetic rubber.

Q. What manufacturing processes are involved in the

manufacture of service drop cable?

A. We would draw the wire as described, stranded, as [fel. 97] I have described; insulated either with thermo plastic or rub er like materials and then combine two, three or four of these bare and insulated wires into what is known as a service group.

Q. Is there a machine which does that, combining?

A. Yes, it looks like a strander. A little larger.

Q. What is it called?

A. It is called a twister in our game. I don't know what others call it.

Q. Mr. Detwiler, would you state as best you can the relative use today by Central Cable of aluminum and copper in your total product line?

A. We make three and one-quarter to four times as many feet of aluminum conductor as we make of copper.

Q. Can you state or give me the same information with respect to covered line wire?

A. In line wire we make eight to ten times as much

aluminum as copper.

Q. Then is that again in feet, sir!

A. It is in feet.

Q. And would you give me the same information with

respect to your product of service drop cable!

A. Service drop would probably be eight times as many feet because we take three or four cables to make a [fol. 98] foot of that, and in the final product it would probably be eight times. That is what my estimate would be.

Q. About eight times in foot production?

A. The finished product, copper service drop cable, that

is made by us.

Q. Let me go back, Mr. Detwiler. Am I correct that you said you make in terms of finished product about eight times as much aluminum as you make copper service drop?

A. Yes.

Q. And when you say in the finished product that includes three separate, in the case of triplex, three separate—

A. Yes.

Q. (Continuing)—conductors?

A. Yes.

The Court: Would this be a good time to take a short recess?

(Whereupon at this point a recess was taken after which the trial was resumed.)

[fol. 99] Q. Mr. Detwiler, I want to ask you one thing which you testified to previously. Is there a future's market in aluminum?

A. Not that I know of.

- Q. Is there a future's market in copper?
  - A. Yes.

Q. Now, Mr. Detwiler, has there been any trend over the past ten or fifteen years in the relative uses of copper and aluminum in the product you manufacture?

A. The trend, is an increasing penetration of aluminum

into my product.

Q. Do you expect this trend will continue?

A. That would be a guess, but I am prepared to accommodate that trend. It would be a guess.

Q. Mr. Detwiler, is there a difference in price between your aluminum and your copper conductor products, speaking generally?

A. The difference in price is in the footage that the customer uses. There is a price differential in the footage.

Q. What is the difference generally!

A. The difference is in favor of the aluminum because you can get more feet of aluminum cable in a given quality for a dollar than you can get of copper.

Q. Are the prices of aluminum conductor products-

[fol. 100] The Court: Let me interrupt. I don't know as I understand. You say the difference is in the footage. That means in one measured foot?

The Witness: The price for one foot of aluminum conductor is less than the price for one foot of copper because of the weight difference, Judge.

The Court: I see.

The Witness: The weight difference of the metals them-

Q. Are the prices of aluminum conductor products related to the prices of copper conductor products which you sell?

A. I see no relationship.

Q. Have they ever been related?

A. In my opinion they were related when aluminum began to penetrate the market 10 or 11 years ago. They priced the aluminum product quite close to the copper product which it was replacing in my business and so sold it for some time. But as increased quantities came along, the prices became out of phase, so to speak.

Q. What kind of buyer purchases your products, Mr. Detwiler?

A. The bulk of my products are sold to the public utility purchasing agent.

[fol. 101] Q. You stated the price of aluminum per foot is less than the price for copper. You still do, however, manufacture copper. Why in general do your customers buy copper instead of aluminum?

Mr. Bergson: I object to that, Your Honor.

The Court: Well, of course, it's pretty speculative in the form it is. Why doesn't somebody else do something, which requires this man to pry into the mind of somebody else? I wonder if you can't get it some other way. I think you have teld the different uses of aluminum as compared with copper, which I suppose is the difference which prompts the buyer to buy for the particular use he has in mind. I don't think it's very harmful but I think we have got it anyway. Just let me see if I can clear that up a little bit. Your copper production has a certain purpose, doesn't it?

The Witness: In general both are used for the transmission of energy, if that's what you mean. Both products are.

The Court: The question he asked was, why would anybody buy copper products, which, of course, requires you to delve into somebody else's mind.

[fol. 102] The Witness: Perhaps my answer might clear it up for you. I would say I sell what the customer asks for and that is an engineering decision which I have no part in.

The Court: I guess that answers that.

Q. An engineering decision on the part of the customer.

A. Yes. I sell anything he wants, if I can make it.

Q. Well, as a seller of this product, Mr. Detwiller, do you know, generally speaking, the uses that your customers make of aluminum as opposed to the uses they make of copper?

A. I'm not sure I understand that question. The uses. I only make electrical transmission cable or energy trans-

mission wires and cables.

Q. Let me try it again. As a seller, you are, of course, interested in the type of products your customers buy. And as far as you are concerned and as you have testified it is an engineering decision on the part of the customer as to which product he will buy. Am I correctly stating your testimony, sir?

A. That's the way I understand the purchasing of my

product. What the engineer says he wants.

Q. What factors to your knowledge as a seller would cause a utility to buy a more expensive copper conductor

product in preference to a less expensive aluminum conductor Product?

[fol. 103] Mr. Bergson: That's limited to your knowledge, Mr. Detwiller.

The Witness: Yes, I understand.

Q. Yes, it is so limited.

A. In speaking to customers who use copper I find that an industrial atmosphere, a sea coast atmosphere where there is a salt problem in the air sometimes either one of those conditions causes a man to specify copper instead of aluminum at a given place.

Q. What would be the reason for that, sir?

Mr. Bergson Highly speculative, Your Honor. The last answer was based on hearsay. I think it is going a

little far afield. I don't like to object.

The Court: I think that's true, but I think he has substantially gotten the answer. He says his experience or his knowledge. Those concerns that our purchasers located near the sea coast or some particular area, I suppose it may be attacked by salt deposits in the air—it's his experience that they use copper there. I think you got it.

Q. All right, Mr. Detwiller, as a manufacturer of wire and cable, what is the principal area within which you can make a profit?

[fol. 104] A. You mean where do I live in the business?

Q. Yes, sir.

A. In the spread between the rod price I pay and the wire and cable I fabricate and sell.

Q. Does the spread between the price of aluminum rod and the price of aluminum cable vary from time to time?

A. Yes.

Q. And what is the effect on your company when it narrows?

A. I don't make as much money making the product as I did before.

Q. Is this general situation also true in the case of copper?

A. Yes.

Q. Mr. Detwiller, what group of producers are your prin-

cipal suppliers of aluminum?

A. We buy from the major primary producers over the course of the years. We have from Kaiser Aluminum, Revnolds, ALCOA.

Q. These producers are producers of the primary metal

as well as rod?

A. Yes.

Q. Are these producers also among your competitors, sir?

A. Yes, they are.

Q. What group of producers are your principal copper

suppliers?

[fol. 105] A. We buy from Phelps-Dodge, Kennecott; in the past have purchased from Anaconda. Much the same caliber people.

Q. Is this group of producers also among your competi-

tors in the sale of copper wire products?

A. They are.

Q. Mr. Detwiler, I am going to hand you a document which has been marked as Government Exhibit 422 for identification and I will ask you what this is, sir.

A. This is a letter from my Vice-President, Mr. Melvin C. Harris dated January 26, 1955 to Mr. Alfred R. Gneiser, Aluminum Company of America, York, Pennsylvania.

Q. Do you recognize this signature on this letter, sir?

A. I do.

Q. Whose signature is it?

A. Melvin C. Harris.

Q. And on January 26, 1955 was McNin C. Harris, Vice-President of the Central Cable Corporation?

A. He was.

Q. And were you at that time President, sir?

A. I was.

Mr. Mahaffie: I will offer Government Exhibit 422 in evidence as Government Exhibit 422.

Mr. Bergson: I have no objection to the admission of the document in evidence as proof of fact that the docu-[fol. 106] ment was sent, but I question the admissibility of the document as far as the truth of the statements contained therein. That is hearsay.

The Court: Well, I think that's true. The document I suppose refers to some facts, or alleged facts. There

is no dispute it was sent, but how far it proves the facts there is something else again.

Mr. Mahaffie: May I question the witness on that.

The Court: Yes.

Q. Have you read that letter?

A. Yes, I have read the letter.

Q. Are the statements contained therein true?

A. The first paragraph certainly is. The second paragraph certainly is. The last paragraph, the last sentence of that paragraph, the second paragraph says, "We were told". So that probably is hearsay, isn't it, in evidence? We were told, however, by the fellow we wrote the letter to.

Q. Well, sir, is it true that it would be a true statement you were told?

Mr. Bergson: Do you know that you were told? [fol. 107] The Witness: My own knowledge, no, sir.

Q. Well, have you any reason to believe Mr. Harris would misrepresent this fact in your letter?

Mr. Bergson: I don't think that has any relevancy.

The Court: Nobody would intentionally—

Mr. Mahaffie: I am going to offer this as a piece of business correspondence from the Central Cable Corporation, Your Honor.

The Court: I know you are, but here is something this witness—somebody else writes that he was told something. I suppose the time, the place, who told him, does that appear in the letter?

Mr. Mahaffie: No, sir. As a matter of fact-

The Court: As a matter of fact, in order to prove a fact of that kind you have to give the time, the place, the circumstances, and who was present.

Mr. Mahaffie: I am really not interested in proving what they were told in the second paragraph. I am not going to offer it for that purpose. I will offer it without the second paragraph, if that will meet with your objection. [fol. 108] Mr. Bergson: That does not meet with my objection.

The Court: Is the last paragraph correct to your knowledge?

Mr. Mahaffie: What about the third paragraph, sir!

The Witness: There are in this five paragraphs.

Mr. Mahaffie: What about the third one? The Witness: The third paragraph, sir?

Mr. Mahaffie: Yes, sir.

Mr. Bergson: That is not the one we are talking about. The Witness: It was in the second one "We were told",

Mr. Bergson. Should I read the third paragraph?

Mr. Mahaffie: Yes, sir, if you have not already.

The Witness: Out loud?

Mr. Bergson: No. Read it to yourself.

The Witness: I thought you were waiting for me to read something. The conversations referred to in the third paragraph in my opinion took place in my office without my being present.

[fol. 199] Mr. Bergson: I object to it, Your Honor.

The Court: So that you don't know the facts of those conversations if those facts are recited or conclusions drawn in that letter.

The Witness: That's correct.

The Court: I am very fearful that that doesn't prove a fact. While it is not in evidence they can't stop me from looking at it. (Reading) I am not very excited about it as proof of any fact.

Mr. Mahaffie: Well, I want to make an offer of this docu-

ment.

The Court: I will receive it as a piece of correspondence passing between the parties.

Mr. Mahaffie: All right, sir.

Q. Now Mr. Detwiler, would you read the text of this letter dated January 26th out loud, sir?

Mr. Bergson: Oh, I-

The Court: Not necessary, is it! I took a quick glance at it especially the last end of it.

Mr. Mahaffie: All right, sir, I withdraw that.

Q. Mr. Detwiler, what is the nature of the request, if any, made in this letter!

[fol. 110] Mr. Bergson: Objection.

The Court: Overruled; I will receive it. Did you request something or did Mr. Harris request something in that letter?

The Witness: He is stating a position our company found ourselves in with regard to the commercial terms of the day, Judge.

- Q. What was that position?
  - A. Well,-
- Q. I would like you to state the position, sir, that the letter relates to.
- A. It relates to the selling price of rods and the selling price of the wire and cable made from said rods and aluminum.
- Q. What is the position of the company in relation to the selling prices?
- A. The price of the rod was increased as stated in the first paragraph and coincidental with that increase of the rod price, which was public knowledge, the Aluminum Company of America published certain price sheets covering the sale of the conductor, and we pointed out to them in this letter to ALCOA that they were not selling the conductor at these new prices, that they were selling it at reduced prices. And we were saying that if they did that they should reduce the price of the rod.
- Q. And that in effect was the nature of the request? [fol, 111] A. Yes.
- Q. All right, sir. I now offer a document which has been marked as Government Exhibit No. 423.

The Court: Just a moment, counsel. Let me get that straightened out because I don't know now far this sort of condition arises, but let me see if I can understand you gentlemen's position. Of course, if you change what you might say is your wholesale price the margin of profit is reduced, and that's exactly what I get from this witness's statement. That happens in the milk industry, it happens in the gasoline industry. Where there is a spread between the producer or the manufacturer and the sale price, that spread is not constant in many lines of commerce. Isn't that right?

Mr. Mahaffie: That is correct, sir.

The Court: Well, all right, what inference do I draw or what importance do I attach to the fact that the spread as between the primary or ingot aluminum and the finished product varies from time to time? What inference do I draw?

Mr. Mahaffie: The importance of it here, Your Honor, [fol. 112] and the thing which this document demonstrates is that the same company is at both ends; namely ALCOA. ALCOA establishes the price for the rod, that is the raw material, and the price for the cable, which is the finished product.

The Court: Same thing in the gasoline outside the place,

don't you think?

Mr. Mahaffie: I'm not up on the—

The Court: Well, I am not either.

Mr. Mahaffie: I am sure that is true.

The Court: I assume there are producers, refiners and also distributors. I don't want to get into an argument with you gentlemen, but I just thought this would be a good time to bring this out.

Mr. Mahaffie: Well, what we are trying to show here is that the independent non-integrated producer of these products is by the very nature of the industry operating in an area both ends of which are controlled by the primary producer, both as to suppliers and competitors. This very simply is all we are trying to show.

The Court: Isn't that a common thing in American busi-

ness?

[fol. 113] Mr. Mahaffie. In some businesses, it is. Yes, Your Honor.

The Court: I think so. What do I draw from all that? Mr. Bergson: I would just like to state for the record, Your Honor, I take issue with the statement that we control price at both ends of the—

The Court: I assume that's true. Mr. Bergson: Both or either end.

The Court: All right. I think I get it. Actually I suspected something like this was coming and I don't see very much to it. The answer is "so what?"

Mr. Mahaffie: I think there is a good deal to it, Your Honor. This is an area of the case which we will develop.

The Court: Okay.

Mr. Mahaffie: And what we are trying to do here with this witness is merely to show the very basic economic business facts whichThe Court: There is no question about the basic economic fact, of course, that there is a spread between the producer and the ultimate consumer in a great many lines of commerce. I think the only point we've got is that [fol. 114] ALCOA controls it. If ALCOA doesn't control it how is it of any importance?

Mr. Mahaffie: Well, if it's controlled not just by ALCOA but by a very few producers similarly situated to ALCOA; we think it's important. If the number of sources of supply at the top of the spread is changed or is altered in some way we think that's important. Similarly if a number of people competing at the end of the spread is changed we think that's important. And all of these facts are things which we will bring out and show are relevant in this case.

The Court: All right.

Mr. Mahaffie: May I proceed, sir!

The Court: Yes.

Mr. Mahaffie: I offer at this time a document which has been marked Government Exhibit 423 for identification and ask that this document be admitted in evidence as Government Exhibit 423.

· Mr. Bergson: No objection.

The Court: Received. I will let you identify it. What is it, a letter?

[fol. 115] Mr. Mahaffie: It's a letter from the Assistant District Sales Manager of ALCOA, Mr. Fisher, in response to Mr. Harris' letter which has gone in as Government Exhibit 422.

The Court: All right. Received.

(Government Exhibit No. 423 received in evidence.)

Q. Now Mr. Detwiler, have you read that letter, sir?

A. Yes, I have.

Q. What is the general nature of the response contained therein?

Mr. Bergson: Your Honor, I think the letter speaks for itself.

The Court: Yes, I will let you call his attention to any particular part of the letter if you want to.

Mr. Mahaffie: Surely.

The Court Indicating what you want brought out.

A. He says they couldn't do what we asked them.

Q. That's what I wanted to bring out, Your Honor. I don't think it's objectionable. Mr. Detwiler, has Central Cable Corporation at any time subsequent to 1955 made any request of the Aluminum Company similar to that contained in the letter we have just been discussing?

A: We have requested prices for aluminum products

[fol. 116] from them on similar terms.

Q. Have you done this from time to time?

A. To my knowledge at least once. I can't say more than once.

Q. And did these attempts meet with any results different from that shown by this exchange of letters?

A. I was able several weeks ago to make a contract with this company on terms which I considered satisfactory. But for a new product.

Q. For aluminum have you had any gréater success?

A. On rods, no.

- Q. Mr. Detwiler, does the Central Cable Corporation have any plans to expand its operations further into the field of metal fabrication!
  - A. Yes, we do.

Q. What do you plan to do generally, sir?

A. We plan to integrate backwards, as I call it, produce our own rod.

Q. Why do you plan to do that, sir?

A. Because that increases the spread in which I live. I can buy raw materials for that at a lower price and, therefore, increase my own spread.

Mr. Mahaffie: No further questions, Your Honor.

The Court: Cross examination.

### [fol. 117] Cross-examination.

### By Mr. Bergson:

Q. Mr. Detwiller, you testified that you have been in the wire and cable business since 1939, I believe that is correct.

A. I have been associated with my company. I was in the Army a few years in the meantime.

Q. Yes, I understand. When you first became asso-

ciated with the company, what type of products was it

making?

A. It made copper distribution cables, sir, and some copper transmission cables in small quantities, but no aluminum.

Q. No aluminum at that time?

A. No, sir.

Q. And when did your company go into the fabrication of products with aluminum as a conductor?

A. As soon as the first customer asked us, about 1950,

somewhere in that year.

Q. When you did that did you have any plant expansion program, any machinery expansion program?

A. You mean at the same time?

Q. At the time you got this first order for aluminum.

A. No.

Q. How did you fulfill that order?

A. I took as described the copper machine and cleaned it [fol. 118] up and started getting some help from my suppliers and made aluminum on the machinery I already had in use.

Q. Was that much of a problem?

A. As I look back on it, it was, but it turned out as we did it more often, it was rather routine over three or four years.

·Q. And during that three or four years you made both copper and aluminum products on the same machinery?

A. Yes.

Q. Drawing, stranding, insulating?

A. Right.

Q. What you did when you got an order for aluminum you cleaned the machines up, changed the dip on your drawing machines, and drew aluminum on the same machine. Did you need any different personnel to do this?

. A. No.

Q. Any different salesmen to sell the product?

A. We were selling to the same purchasing agent. Also they were the same men.

Q. So that at the time that you went into the business of manufacturing aluminum transmission cables and conductors with aluminum as a conductor, you used the same

machinery and the same personnel with which to do it, and you did that for two or three years?

A. Somewhere between two and four years I would judge.

# [fol. 119] By Mr. Bergson:

Q. Now, was it because of increased volume in the aluminum business which justified the additional machinery that led you to put in equipment that you used primarily and even solely for aluminum?

A. It was.

Q. And had it not been for that increased volume you would have continued to operate on the same machines. Now, this is true as to drawing, this is true as to stranding, as I understand it?

A. That is correct.

Q. I noticed in his direct examination Mr. Mahaffie failed to ask you or didn't ask you whether you used the same machines for insulating copper or aluminum?

A. Identical.

Q. Now, is there any change that has to be made in these machines to insulate copper or aluminum?

A. No.

Q. Is there a contamination problem or dip problem?

A. No, because the wire is made then when it goes in there.

Q. So there is absolutely nothing that has to be done?

A. Nothing.

Q. When you insulate, you use the insulating facilities. Now, let me ask you this. On occasion today when you [fol. 120] have an extremely large order, do you convert one type of machinery to the other type of machinery, the machinery used for copper to aluminum or vice versa?

A. It happens at times we do, because we have sleet storms and emergencies and then we are converting to

whatever we need to make the order.

Q. So it will be safe to say that except for the change of the lubricants and the cleaning out of the machinery, which you did regularly for two to four years, and which you do now occasionally as the demand requires it, that same machinery can be used for drawing, stranding and insulating copper and aluminum?

A. Yes.

Q. You also testified that you had two plants, one I think you said was in Illinois and in Georgia, I think you said, it was in Georgia.

A. I have three. One in Pennsylvania where I am.

Q. I beg your pardon. I didn't hear that. When was your Georgia plant built?

A. It was started in March, 1961 and completed for

operation in November.

Q. Since this acquisition?

A. What date are you talking about?

Q. I am talking about April 1, 1959.

[fol. 121] A. Definitely since that date.

Q. And what do you plan to use, what are you using that plant for?

· A. That is designed for the manufacture of high quality transmission cable in aluminum only.

. Q. Can it be used for copper?

A. Yes.

Q. And did you build that plant because of your growing needs for capacity?

A. No, turn it around, Mr. Bergson. I built it because of the industry's growing need for product, which I surveyed, and then I decided we had to have it.

Q. And you built it because you expected to participate in that increase in the industry's need for the product?

A. Fully expected.

Q. Now, I think you mentioned that you are now buying aluminum pig because you are integrating as you said further backward?

A: Thave not bought it yet, Mr. Bergson.

Q. You have placed an order for it?

A. I am negotiating and have placed some orders for it.

Q. I take it, then, you have acquired or are in the process of acquiring a mill that will roll aluminum rod.

[fol. 122] A. Yes, sir.

Q. Where will that mill be located?

A. Jersey Shore, Pa.

Q. That is where you are?

A. Yes, sir.

Q. And will that mill roll both copper and aluminum products?

A. Yes.

Q. How much of an increase in your capacity was effectuated by building of your Georgia plant?

A. About double my capacity in Aluminum, total capacity

of the other two plants had doubled.

Q. So that this plant is equal to the capacity in the other two plants?

A. Correct. But for a different product. I am talking

now on the capacity tonnagewise.

- Q. I understand. I think you said also that certain percentage of your volume was in copper and certain percentage today in the aluminum. I think we should make one thing crystal clear now, if we can, and that is that are the copper, the products using copper and the products using aluminum used for the same purpose by the producers?
  - A. To transmit electrical energy.

The Court: The answer is yes.

Q. And you said the ratio that you have in bare, I [fol. 123] think you said the copper was about three and a half times footwise than aluminum?

A. No, the other way, Mr. Bergson.

Q. I beg your pardon. Aluminum was 3½ times footwise. Now, what would be the ratio valuewise, in dollars valuewise?

A. We sell more dollars worth of aluminum conductor than copper conductor.

Q. But would the ratio be as great as you have indicated in dollars?

A. No, I would be less.

Q. But the ratio would be closer to two to one?

A. Closer to two to one in dollars, yes, sir.

Q. And in line wire and service drop, would the same hypothesis hold true?

A. Yes, the ratios would be the same because the reduction would be the same, because the price per foot is lower than for the aluminum.

Q. But from the standpoint of your dollar value, the difference between copper and aluminum would not be as great if you used dollars than it would be if you used feet; is that right?

A. That is right,

[fol. 124] Q. Now, when you sell your electrical conductor, how do you ordinarily sell it, in terms of delivery? Do you sell it ordinarily on price at the time of delivery or do you sell it on a firm price, ordinarily?

A. The bulk of our business is sold on prices in effect

at the time we deliver it.

Q. The price in effect at the time you deliver it?

A. Yes.

Q. Which is the same pricing formula that is used when you purchased rod, price in effect at the time it was delivered to you?

A. That is correct.

Q. There have been occasions, I take it, however, when you have sold at a firm price?

A. Yes, we have had to.

Q. What has occasioned you to do that?

A. A competitor offering firm price.

Q. Or a customer demanding a firm price?

A. The purchasing agent has something to do with the series of negotiations.

Q. Do you know what ALCOA general policy is on the

sale of aluminum conductor deliverywise?

A. I have read printed policy on their price sheet.

[fol. 125] Q. That price sheet is price at term of delivery?

A. Price at time of delivery. That is what the price

sheet I read said.

- Q. Let me ask you this, Mr. Detwiler? This merger took place on April 1, 1959. Has your business in the sale of aluminum conductor, and limiting this to the sale of aluminum conductor increased or decreased since that time?
  - A. Our sale of aluminum has increased.

Q. Has it increased from year to year?

A. That would be '60 and '61.

Q. Right.

A. Yes, sir.

Q. And '61 is better than '60?

A. In volume of sales, yes, sir.

Q. Yes. Prior to the acquisition of Rome Cable did you find in the market place that Rome was an aggressive price competitor in these products, the insulated products with aluminum?

Mr. Mahaffie: That is objected to, your Honor, as beyond the scope of direct examination.

The Court: Overruled.

The Witness: May I have the question again, Mr. Bergson?

[fol. 126] (The Court Reporter repeated the question as above recorded.)

A. I didn't hear much about, I think, before then, because they didn't make very much of that for their own account. I don't believe so. I don't have any information about them being aggressive or non-aggressive.

Q. 'You didn't even encounter them?

A. I very seldom ran into Rome before that on these products we are speaking of.

Q. In the light of that would you say that this acquisition by ALCOA of Rome has hurt you in your business?

A. It hasn't hurt me.

Q. The Government, I don't know whether you heard the Government's opening statement here yesterday but they alluded to the rash of mergers in the electrical conductor industry. If you will recall Olin Mathison acquired Southern Electric Company, Did that merger hurt you?

A. No, sir.

Q. You will recall that Kaiser acquired U.S. Rubber Company. Did that merger hurt you?

A. No, sir.

Mr. Melchior: Your Honor, I think I am going to have to interpose an objection here to this line of questioning. In the first place, the criteria determining legality [fol. 127] under Section VII has to do with the probable effect upon competition.

And as we indicated in our arguments yesterday no showing of actual effect is necessary.

The Court: That is true, Counsel, but where there has been an opportunity for actual effect wouldn't that be helpful to me in determining the probability. Suppose the shoe is on the other foot and here were companies that were hurt badly by the Olin Mathison and this other corporation, do you mean to say that you can't prove that?

Mr. Melchior: I believe we could, your Honor, because I think in that case the witnesses could demonstrate how they had been injured. I don't think the basis has been laid here for showing that this witness has not been injured.

The Court: He can't demonstrate in any case. He said he hasn't had one. No, overruled.

# By Mr. Bergson:

Q. Let me ask you one final question, has the totality of these three mergers that I have just alluded to hurt you in your business?

[fol. 128] .A. No, sir.

The Court: Gentlemen, I think we will recess until two o'clock. I don't know how it is going to work out with you. We will try it. I think if you people go upstreet why, it will take you about an hour and a quarter.

Mr. Mahaffie: If the Court please, I have about three questions on redirect and then Mr. Detwiler could be excused.

The Court: All right,

Mr. Mahaffie: If you don't mind, sir.

# Redirect, examination.

#### By Mr. Mahaffie:

Q. Mr. Detwiler, as a practical matter, is the same machinery used today in your plant for drawing aluminum and copper?

A. On occasion but not regularly.

Q. The rolling mill which you stated you are putting in, sir, will the same machinery be used in that rolling mill to roll aluminum and copper?

A. That is a complex technical question, because I would have to describe to the Judge how we do it. And we have [fol. 129] a little bit of an edge in this mill, Judge, that I don't like to expose here.

The Court: I will talk to you about that privately.

The Witness: Yes.

Q. All right, I will rephrase it. In rolling mills in operation today is the same machinery used to roll aluminum and copper?

A. Not that I know of, sir.

Q. Does the Alaminum Company of America to your knowledge sell its electrical conductor products at the prices and terms and conditions of sale shown on its pricelists?

A. I have no way of telling that.

Q. To your knowledge, have they ever departed from

those prices and terms and conditions of sale?

A. I have seen published bills from TVA and the Bureau of Reclamation in past years where I was able to see that they sold to those government agencies at a price below the sheet that I had in my hand at the time. But I have no knowledge of that myself.

Mr. Mahaffie: That is all, sir.

The Court: Anything else?

Mr. Bergson: No.

(Witness excused.)

The Court: Recess until two o'clock.

(Whereupon, a recess was taken until two o'clock p. m. of the same day.)

#### [fol. 130] AFTERNOON SESSION

APPEARANCES: Same as Morning.

Mr. Bergson: Your Honor, Mr. Melchior and I conferred as you requested this noon and we will take care of the cost by splitting it between us.

The Court: Alright now, suppose the government wins. Is it taxable? You couldn't get any cost against the gov-

ernment.

Mr. Bergson: No, sir.

The Court: The tax, as a part of the taxable cost?

Mr. Bergson: I'm' not at all sure it would be.

The Court: Neither am I.

Mr. Bergson: I don't think that's in the bill of cost.

The Court: That's the part I wanted to settle.

Mr. Bergson: I think they should pay a little bit from their fund.

The Court: Of course, you have the question of whether [fol. 131] or not it's taxable. That's what I wanted to avoid having come up six months or a year later because I have had the same thing happen in another trial. Why, don't you people—

Mr. Melchior: We will confer a little bit longer, your

Honor, and advise you.

The Court: If you could settle whether or not the part paid would be an item of taxable cost.

Mr. Melchior: Yes, we will determine that.

The Court: All right. I guess we are ready, Mr. Melchior.

Mr. Melchior: The government is ready. Yes, sir. We call Mr. David Dale Martin. May it please the Court, Dr. Martin is an expert witness for the government in the field of statistical analysis and we will use Dr. Martin to present to the Court some statistical tabulations which have been made available to the defendant some time ago, in most cases. One or two we have served upon them recently in accordance with the pre-trial order. It may be a little cumbersome in handling these and we have thought at length how we can best handle them. There are about twenty-eight or thirty different tabulations, and we have [fol. 132] formed them in one ledger. If there is no objection from the defendant what we would like to do is to make available to the Court a complete set and as we offer them in evidence and as they are admitted in evidence the Court then could follow the witness's explanation. Rather than offer the whole thing as one group and try and meet objections to var ous ones, we will introduce them in numerical order. They have been numbered.

Mr. Bergson: I have no objection to that procedure, your. Honor, provided it is understood that I am reserving my objections to the individual charts as they go in.

The Court: Yes.

Mr. Melchior: I don't think counsel understands exactly what I intend to do. The first offer will be of GX1-7 for identification. We will offer those because if I understand counsel the objection to those would be a common objection. The same objection to all of them. All relating to the same general objection. We will offer the first seven, listen to

counsel's objections, and if and when they are admitted [fol. 133] then it would be our purpose to have the witness explain them to the Court, then we would go to the next one or two or the next series.

The Court: Well, I guess it's all right. Suppose we start off and if we get hopelessly lost, we'll start over.

Mr. Melchior: I beg your pardon. I didn't hear you. The Court: We will start off the way you indicated. We

can change our method of doing this.

Mr. Melchior: May I ask that my reference to GX number be stricken. I erroneously used the number GX 1: Actually these tabulations had pre-trial numbers beginning with number one, but we had in the last recess marked them with GX numbers for identification.

Direct examination.

# By Mr. Melchior:

Q. Would you state your name and occupation?

A. David Dale Martin; Business Economist.

Q. Are you employed?

A. I am Associate Professor of Business Economics and Public Policy in the Graduate School of Business at Indiana University, and I am employed on a part-time basis as a consultant to the Anti-Trust Division United [fol. 134] States Department of Justice.

Q. How long have you served as Associate Professor at Indiana University?

A. About three and a half years.

Q. Where were you employed before that?

A. For the preceding six years I was first an instructor in Economics and then Assistant Professor of Economics at Washington University in Saint Louis, Missouri.

Q. What is your educational background?

A. I received an AB degree in Economics and an MA degree in Economics and Statistics from the University of Texas and a Ph.D. degree in Economics from the University of California at Los Angeles.

Q. As Assistant Professor in Business Economics at Indiana University do you have occasion to teach courses in statistical analysis?

A. Yes. I teach post-graduate students in the School of Business entitled "Methods of Business Research."

Q. Professor Martin, when you are responding to the questions, if you will enunciate clearly and perhaps address the Court—

The Court: A little louder.

Q. In connection with your consulting employment with [fol. 135] the Anti-Trust Division of the Department of Justice, have you been familiar in any way with the Rome-Alcoa merger?

A. Yes. I have prepared or personally supervised the preparation of a number of statistical tabulations relating to various product categories with which the merging companies were concerned, in connection with the case.

Q. Now in connection with your work in this proceeding have you prepared any tabulations relating to shipments of aluminum conductor wire and cable?

A. Yes, I have.

Q. Did you identify them?

A. Governments Exhibit For Identification Number 434 entitled "Shipments of aluminum conductor wire and cable, 1955-1959."

(Government's Exhibit for Identification No. 435 entitled "Shipments of ACSR and Aluminum Cable Bare 1955-1959.")

(Government Exhibit No. 436 for Identification entitled "Shipments of Aluminum Wire and Cable Insulated or Covered 1955-1959.")

Government Exhibit No. 437 for Identification entitled "Explanation of Estimates of Shipments of Kaiser Aluminum and Chemical Corporation.")

[fol. 136] (Government Exhibit No. 438 for Identification entitled "Concentration of Shipments of Aluminum Conductor Wire and Cable accounted for by integrated producers 1955-1959.")

(Government's Exhibit No. 439 for Identification entitled "Concentration of Shipments of ACSR and Aluminum Cable Bare accounted for by integrated producers 1955-1959.")

(Government's Exhibit No. 440 for Identification numbered "Concentration of Aluminum Wire and Cable Insulated or Covered accounted for by integrated producers 1955-1959.")

Mr. Melchior: The Government offers into evidence in this proceeding the Government's Exhibit 434 for Iden-'tification up to and including Government Exhibit 440 for identification.

Mr. Bergson: Your Honor, the defendants object to Government Exhibit 434. They do not object to Government Exhibit 435. We object to 436. And I will state my reasons in a moment. We do not object to 437. We object to 438, 439 and 440.

Our objection to 434 is based on the ground that the tabulation is irrelevant because it refers to Aluminum Wire and Cable which we say is an irrelevant line of commerce. [fol. 137] Our objection to 436 is based, on the same grounds. It covers insulated and covered aluminum wire and cable and we say that is objectionable because it is irrelevant, because there is no such line of commerce.

438 is objectionable on two grounds that it relates to an irrelevant line of commerce and two because it testifies and talks about concentration.

We object to 439 solely upon the conclusionary testimony about concentration among the integrated producers.

We objection to 440 on the grounds of irrelevancy and of the conclusionary statement in the title.

The Court: Those objections, not all of them I guess, go to the dispute between the government as to whether or not these particular items to which the Exhibits refer are proper lines of commerce.

Mr. Bergson; Right.

The Court: The additional objection made as to several of them is that they are conclusory rather than statistical facts. Well, of course, I don't see I can—I am cer-[fol. 138] tainly not prepared to say at this time whether or not these different lines of commerce are in fact proper lines of commerce. It seems to me what I'd have to do would be to receive them and possibly subject to a motion to strike, and I think as far as these conclusory statements in them I can handle that when I come to use them. I'll receive the Exhibits.

Mr. Melchior: Dr. Martin would you make available a copy, in accordance with our earlier instructions? Now, your Honor, this is the complete set, and I guess as they are admitted you will want to refer to them because Dr. Martin will comment on them and what they purport to show.

The Court: All right.

Direct examination.

### By Mr. Melchior:

Q. Now, Dr. Martin, directing your attention to GX 434 which is the first tabulation I believe would you state to the Court, Dr Martin, what this tabulation purports to show?

This tabulation sets forth statistical informa-A. Yes. shipments of Aluminum Conductor Wire [fol. 139] and Cable. Aluminum Conductor Wire and Cable is defined in the footnote to the title specifically to include the sum of shipments of Aluminum Conductor Steel Reinforced and Aluminum Conductor Bare and shipments of Aluminum Conductor Wire and Cable Insulated or Covered. The information in the table comes from several sources. The first line labeled "Total Industry Shipment" gives the total reported to the Business And Defense Services Administration Of The Department Of Commerce, published by that agency, and in addition further down the table we have the comparable figures from individual companies that reported to the Business And Defense Services Administration. The Aluminum Company's figures and the Rome Cable Company's figures were obtained from the answers to interrogatories. other firms were asked in letters from the Department of Justice to give information about what they had reported to the Business And Defense Services Administration or BDSA as I have noted here—and on the basis of the letters from those companies to the Department of Justice I have compiled individual company shipments. Now for each of the years 1955-1959 we have set forth both the submission [fol. 140] and the percentage figure which shows the particular companies' shipments as a percentage of the industry total as reported to BDSA. The firms included in

the list, in addition to Alcoa and Rome Cable Corporation. are all of the firms that reported to BDSA except three firms that shipped very small amounts, less than one-tenthof one percent total, and one firm that did not supply information to the Department of Justice. These firms are given in footnotes in detail. The table I think is quite complete. There are a few firms that did not report their shipments to BDSA, but we had letters from some firms giving us information though they had not reported to BDSA. They are included in the footnotes and the total of footnote two explains that the total of these shipments would amount to a very small amount compared with the ones listed. I think I have the significant information on the face of the table and all other information I have available included in the footnotes. I might say that some figures for the Kaiser Aluminum company were not from the same sources as others. They were estimated on the basis explained in the footnote and explained in detail in other tabulations.

The Court: Shouldn't we have, to start with, your defi-[fol. 141] nition, the witness's definition, of "Aluminum Wire and Cable"? Shouldn't he define that so that we know in particular what we are talking about or is it capable of any more definite definition other than the terms themselves?

#### By Mr. Melchior:

Q. Dr. Martin, the phrase "Aluminum Conductor Wire and Cable" which you have used in this tabulation, was drawn from what source?

A. This phrase I have defined in footnote one as the sum of two sub-categories—Aluminum wire insulated or covered and ACSR which means Aluminum Cable Steel Reinforced and other aluminum cable, bare—These are categories—bare aluminum conductor cable, and insulated or covered aluminum conductor cable that are used by the Bureau of the Census in the Business and Defense Services Administration on the forms that they collect the information on.

Mr. Melchior: Your Honor, the following two tabulations will be tabulations of on the one hand the insulated and

covered aluminum, and on the other hand bare aluminum cable and ACSR and this first tabulation is a joinder of the two and as the witness stated these are the terminology [fol. 142] used by the Government in collecting this information, so it is not—

The Court: I overlooked that note which is the answer to my question.

Mr. Melchior: All right.

#### · By Mr. Melchior:

Q. All right, Dr. Martin, now I direct your attention to GX 435, and ask you what this tabulation purports to show?

A. This tabulation is set up in essentially the same fashion as the first one. The primary difference being that it shows shipments of aluminum cable steel reinforced and aluminum cable bare rather than the total of that shown in the other tabulation. It covers the same years. It does not have precisely the same firms listed because there were some firms who were reporting shipment of other categories that this one. This was a similar list. The firms given here are firms who reported shipments of ACSR and aluminum cable, bare.

Q. In other words, Dr. Martin, this is the one side of the coin, which is the bare, and the next tabulation GX 436, to which I now direct your attention, is the reverse side of the coin which relates to aluminum wire and cable insulated, and covered?

#### A. Yes.

[fol. 143] Q. And the totals of GX 435 and GX 436 are combined in the first tabulation you discussed, GX 434; is that correct?

A. That is correct. The second two tabulations are a break-down of the first one into two sub-categories.

Q. I think perhaps, Dr. Martin, you might explain to the Court that reference to his earlier question as to what do these terms mean. That in those cases where those companies did not report to BDSA and from whom we got the statistical information directly reported that information to us in what manner? Was what they are reporting to us consistent with the BDSA inquiry?

A. Yes. They were asked in the letter of inquiry to them,

to give us the same information that we asked from others, and also to tell us whether or not they have reported.

Mr. Melchior: I might also point out, your Honor, that all the statistical raw data upon which these tabulations were based was submitted to the defendant some months ago, and there was no objection rendered with respect thereto.

Q. Dr. Martin, I now direct your attention to government Exhibit No. 437 and ask you to state what that purports to show?

[fol. 144] A. This is an explaination of the way in which I estimated the shipments for the Kaiser Company that went into the three previous tabulations.

Q. Dr. Martin, oh, would you identify that company by its full name?

A. The Kaiser Aluminum and Chemical Corporation. Kaiser Aluminum and Chemical Corporation was sent the same letters as the other companies but they did not give the information that was asked for but gave some other information that was not in my opinion comparable with what we had on these companies. I had, however, from the Business and Defense Service Administration publications giving for these years the shipments reported to them of the groups of companies including Kaiser. I had the information on the individual companies in the group for all of these years with the one exception of Kaiser. So I took that total from the BDSA publication subtracting from it the individual companies included in the group other than Kaiser and the difference is used as Kaiser's figures.

Q. And you are in a position to compute Kaiser's figure based on the fact that you had substantially all of the industry members' figures; is that correct?

A. I was able to compute it because I had from BDSA [fol. 145] for example, in 1555 a figure that was published as the combined total for Aluminum Company of America, Reynolds Metal Company and Kaiser. I had figures from Reynolds and Aluminum Company of America: I added these together, subtracted them from this total, to get the Kaiser figure. For each of the years I had similar infor-

mation, in some cases three companies, some cases four or five.

Q. Dr. Martin, I now direct your attention to government Exhibits 438, 439 and 440. Would you state what these tabulations purport to show?

Mr. Melchior: This again, your Honor, are three related tabulations.

A. No. 438 corresponds with the first tabulation we talked about, No. 434. That is this is concerned with shipments of aluminum conductor wire and cable including both bare and insulated. The information on the table is identical with the information on the first table except that it has been arranged for convenience of the user of the information to show certain aspects of the figures on the first table. Specifically the companies listed on the first table have been broken down into integrated and nonintegrated companies and the sub-titles are listed here in No. 438. The right-hand column shows a percentage break-[fol. 146] down. The middle column shows the shipments in thousands of pounds. And then in addition I have listed for each of the years the companies that are included as integrated and the individual shipments of those companies taken from the first table; the same source. The companies in the integrated group are not the same for the years 1955-59 because of changes in the industry.

Q. Would you explain the relationship between the gov-

ernment Exhibit 438, 439 and 440.

A. Yes. 439 I have done the same except the shipment figures are limited to shipments of ACSR and Aluminum Cable Bare. And in 440 the shipments are of aluminum wire and cable insulated or covered.

Q. Are these the same two general categories we discussed in connection with the first three tabulations?

A. Exactly the same.

Q. In other words we are now showing by these the bare total and the insulated and covered total and the two are added together and they form the first of these three series; is that correct?

A. Yes.

The Court: Dr. what do you mean on 439 and I guess on 440, "Concentration of shipments of ACSR and Alu-

minum Cable Bare." What do you mean by that "concentration of shipments."

[fol. 147] A. Well, what I meant by the term was when this table was labeled I put together what had been the break-down on a company basis showing the percentage of all the shipments in the hands of the group of companies. The group being the integrated group and the other—

The Court: What it really means is that it shows the shipments made by the integrated companies and non-integrated companies.

The Witness: Yes.
The Court: All right.

# By Mr. Melchior:

Q. Dr. Martin, in connection with your work on this proceeding have you prepared a tabulation relating to the relative position of Rome Cable among the non-integrated producers of aluminum conductor wire and cable?

A. Yes.

Q. Would you identify it?

A. Government Exhibit No. 441 for Identification entitled "Position of Rome Among the Non-integrated Producers of Aluminum Conductor Wire and Cable 1955-1958."

Q. And Dr. Martin, I would like to caution you again that you enunciate loudly and clearly so that the reporter can get this in the record.

[fol. 148] Mr. Melchior: The government offers Government's Exhibit 441 for Identification into Evidence.

[fol. 149] Mr. Bergson: Defendant objects, your Honor, for the reason stated before, that aluminum is not a relevant line of commerce and on the ground that the chart is immaterial because it doesn't make any difference in the overall aspect what Rome's position was even if Aluminum were a line of commerce, what its position was among the non-integrated. This dichotomy that the Government has made is an artificial dichotomy and Rome's position among the independents in our opinion is completely immaterial.

The Court: Overruled. I don't understand it, therefore I will overrule it.

# By Mr. Melchior:

Q. Dr. Martin, directing your attention to Government Exhibit 441, would you explain to the Court what this pur-

ports to show?

A. Yes, I have taken again information from the first tabulation, the one that gave the basic information on shipments by company, and on this table I have simply set it forth in a little different form. There is no information on this table that is not on the other tables or cannot be obtained from the other tables. I have compared the ship-[fol. 150] ments in each of the years from 1955 to 1958 of Rome Cable Corporation with the total shipments of the non-integrated firms for each of these years. I have done it all on one tabulation this time rather than on three for aluminum conductor wire and cable for ACSR and for aluminum cable bare and aluminum wire and cable insulated or covered.

Q. In other words, on this tabulation you have included the two groups and the group combining them all in one tabulation?

A. Yes, sir.

Q. And these product lines are the identical product lines referred to in the earlier tabulations, is that correct?

A. That's correct.

Q. Now, Dr. Martin, in connection with your work in this proceeding—

The Court: Let me interrupt.

Mr. Melchior: Yes, sir.

The Court: On II on this Exhibit 441 you put ACSR and aluminum cable bare.

The Witness: Yes.

The Court: On the next one I notice its aluminum wire and cable covered. You leave the ACSR off the third table, don't you?

[fol. 151] The Witness: Yes, your Honor.

The Court: All right. Why do you do that? If the second table is a proper comparison with ACSR and bare aluminum cable?

Why should it properly be included also in the table where the wire and cable is insulated or covered? Maybe there is no point to this.

The Witness: I think, Your Honor, if I understand the question, it's a matter of terminology. I use the terminology of the Business and Defense Services Administration.

Category No. 2 on this Government 441 ACSR and aluminum cable, bare, means aluminum cable and aluminum cable steel reinforced, also bare.

The Court: It means aluminum covered steel reinforced? The Witness: No, sir, aluminum cable steel reinforced covered or insulated would be in the other category. All eable with aluminum conductor that is insulated or covered is in the third category even though ACSR does not appear in the name of that category.

The Court: I see. So that ACSR is actually included

in Table 3.

[fol. 152] The Witness: If it's insulated or covered it would be in table 3. If it's bare it would be in table 2.

The Court: Yes, so that really the only difficulty, I guess, that I have is your not putting ACSR in Table 3, that is, putting it down on paper as in Table 3. Actually it is in Table 3. Am I right?

The Witness: Yes, your Honor. I am not an expert on the technical aspects of wire and cable field, but the criterion that is used in dividing is whether it is covered insulated or covered on the one hand or bare on the other. The distinguishing characteristic of No. 3 is that it includes all wire and cable that has aluminum conductor, and also is insulated or covered.

The Court: Doctor, maybe I didn't make myself clear. You turn to Table 2, it says ACSR and aluminum cable. That indicates to me you are joining two things together and that they are two separate things. I don't know whether I am right or not. Now, down at Table 3 you don't use ACSR at all. What you sin ply say is aluminum wire and cable which I suppose means the same as [fol. 153] aluminum cable insulated. All I am trying to find out is do you use this ACSR as a part of your third table? Your second table seems to add two things together. How many things are added to go into your third table?

# By Mr. Melchior:

Q. Now, let me ask you this. If ACSR is insulated or covered, where would it be included in your tabulation?

A. In No. 3.

Q. It would be in No. 3. If ACSR is not insulated where would it be included?

A. No. 2.

Mr. Melchior: Does that answer your question, Your Honor?

The Court: Yes, only it plainly appears to be in 2 and is not mentioned in 3.

Mr. Melchior: I think this is historical because the agency collected under these titles and rather than confuse the issue we use the same category. But this is a simple division between insulated and covered on the one hand and bare on the other hand.

# By Mr. Melchior:

Q. Dr. Martin, in connection with your work on this [fol. 154] proceeding have you prepared a tabulation relating to companies who have been engaged in the production of aluminum conductor wire and cable as evidenced by a B.D.S.A. directory or series of directories?

A. Yes, I have.

Q. Would you identify it?

A. Government Exhibit No. 442 for identification entitled "Companies listed as producing aluminum conductor wire and cable in the United States Department of Commerce B.D.S.A. directory of aluminum suppliers," dated April 1, 1961, but not listed in the directory for June 30, 1955.

Mr. Melchior: The Government offers Government Exhibit 442 for identification into evidence at this time.

Mr. Bergson: I object, Your Honor, on the same grounds. In addition, I object on the ground that the chart is misleading because it does not give any indication how many companies are engaged in the wire cable, so called aluminum wire cable business. I have no doubt as to the accuracy of the chart as it is portrayed here, but I think it is completely misleading.

The Court: Well, it doesn't mislead me, because I don't [fol. 155] quite understand what we are getting at. All it is is some names that were in the directory in 1961 that weren't there in 1955. Now, what is its purpose? Maybe we could find out in that way. In the directory in 1961 but not in 1955.

Mr. Melchior: I may make a few remarks there. The reason we prepared this chart was in an attempt to keep the record down. We have in mind showing the lack of significant entry of companies into the field of aluminum conductor wire and cable between the years 1955 and 1961. Now, there are published by B.D.S.A. each year a directory listing all the companies in the industry that purport to manufacture this product. Now, we could have done this by copying off the directories and putting them into evidence. In order to save the size of the record, we computed this chart, or tabulation, which purports to show the names of the companies that were in in 1961 but not in in 1955, and, as you can see, the tabulation is annotated to show who these companies are and if they are actually new companies or otherwise.

[fol. 156] The Court: Now, we see.

#### By Mr. Melchior:

Q. Dr. Martin, directing your attention to GX-442, would you state what this purports to show.

A. This shows the names and the number, by counting it up, of the companies that were listed in the 1961 directory that were not in the 1955 directory. The three companies whose names were listed in the more recent directory but not in the earlier directory identified in the footnote, and it gives a little additional information about them that was implicit in our other tables, on the fact-I have noted earlier in another table that Olin Mathison Chemical acquired the Southern Electrical Corporation. I point out here that Southern Electrical Corporation had been listed in the earlier directory, and the name that appears in the recent one is Olin Mathison. The Circle Wire and Cable Corporation was listed in the 1961 directory but not in the 1955, but my information that I also have in the first table showed that they were producing the product. One of those few companies that were producing a product in 1955 and had not reported to the BDSA, and I noted that fact in the footnote.

Q. Dr. Martin, in connection with your work in this [fol. 157] proceeding have you had occasion to prepare a tabulation relating to shipments of aluminum weather-proof and service drop wire and cable?

A. Yes, sir, I have. D

Q. Would you identify it?

A. Government Exhibit 443 entitled Shipments of Aluminum Weatherproof and Service Drop Wire and Cable compared with total shipments of aluminum wire and cable insulated or covered by six companies, 1959."

Mr. Melchior: The Government offer Government Exhibit 443 in evidence at this time.

Mr. Bergson: Defendant objects, your Honor, on the ground of relevancy previously adverted to and on the ground that the chart is incomplete and misleading. They have taken apparently six companies and used the figures for those six companies. There are 20 million pounds of insulated wire and cable unaccounted for in the chart and consequently we think that the chart has no material value whatsoever.

The Court: Well, again, gentlemen, I am not too certain until I get into this case farther than I am, as to whether or not it is relevant or—I notice, Mr. Martin, at the [fol. 158] top, am I right that you are comparing the shipments of weatherproof and service drop wire cable compared with the shipments of aluminum wire and cable? You seem to leave out the word "weatherproof?" this time. Insulated or covered. They mean the same thing when you are referring to weatherproof? You mean insulated or covered?

[fol. 159] The Witness: Weather proof and service drop are both insulated aluminum wire and cable. Some of the wire and cable in this category, shipments of aluminum wire and cable insulated or covered are called, some of these types of wire are called by these two names, service drop and weather proof. Weatherproof and service drop are part of a larger category. I have given the larger category and this component of it.

The Court: Well now, I notice your arst column is titled "Insulated or Covered." And the next column is weather

proof and service. So there must be a difference between the two terms, or is there? I don't know.

The Witness: Yes, Your Honor, there is a difference between the two terms. The difference is total insulated or covered include in addition to weather proof and service drop some other types of insulated wire and cable.

The Court: All right. I will receive it. Just a minute. Mr. Bergson! Your Honor, I would like to point out—

The Court: All right. Go ahead. .

[fol. 160] Mr. Bergson: Even their own line of commerce is aluminum insulated wire and cable, and now they are trying to bring something out of their own line of commerce. In addition to the inaccuracies I can't see the relevancy or the materiality of this chart.

Mr. Melchior: May it please the Court, maybe I can clear this up.

The Court: Yes.

Mr. Melchior: This chart or tabulation is not being offered by the Government to prove a line of commerce at all. This chart is being offered to show that the overwhelming preponderance of all the insulated and covered aluminum wire and cable is used for overhead purposes. We would expect to show by testimony that weather proof and service drop are overhead types of wire and cable. They are not used underground. They are used overhead.

And they are set forth in the first column the total figure of all insulated and covered aluminum wire. The second column purports to show what portion of the total insulated and covered field, weather proof and service [fol. 161] drop appear.

Now when you work out the ratio for each of the companies listed you will find that the percentages set forth in the third column showed that part which is of all other insulated and covered shipments actually are made up of weather proof and service drop.

Mr. Bergson: I submit, Your Honor, that even there they have not accounted for one-third of the total insulated or covered aluminum pounds that are reported to B.D.S.A., which is their source of a material. And if you will notice, Your Honor, this figure for General Cable Corporation has no effect on any of this. They list 45,902 feet richer

they footnote, but in pounds that represents about 6,000 pounds. The 6,000 pounds when added up against—it is six million pounds, and the total you add up to is forty million pounds. But the total reported to B.D.S.A. is sixty million pounds. Therefore, this chart is inaccurate.

Q. Dr. Martin, if you have the figure I will inform the Court as to what the share of the total of this is represented on this page. Explain this to the Court. [fol. 162] A. Yes. Footnote 1 states that these six companies ship 73½ percent of all of the shipments of insulated and covered—

Mr. Bergson: Where is that? It is not on any chart that we have.

Mr. Melchior: Do you have Government's Exhibit 443, counsel?

Mr. Bergson: We have the one that you gave us. It doesn't say that.

Mr. Melchior: Don't you have footnote 1 on it?

(Mr. Bergson: Reads.)

The Court: They apparently added a new footnote.

Mr. Melchior: This chart was revised. Has counsel been supplied with the revision?

Mr. Bergson: I have not seen it, Your Honor.

Mr. Melchior: I will withdraw it at this time Your Honor and make sure counsel have a right one.

The Court: Well before we leave it, let me just ask you another question. These figures now, as I understand it, don't purport to represent the total shipments of aluminum wire and cable but only 73 percent?

The Witness: Yes, Your Honor.

[fol. 163] Mr. Melchior: That is correct.

The Court: All right. In order to show the true picture why shouldn't you show the 100 percent?

The Witness: The footnote goes on to say that these six are the only companies for which the Department of Justice had data on weather proof and service drop shipments that were comparable to the data on insulating shipments generally. We used all the information we had. We don't pick and choose amongst them. § I would have included, more firms if I had information but I couldn't obtain it.

Mr. Melchior: You see, Your Honor, one of the problems we have faced in this proceeding is that we are not always able to gather the statistics either by public or private sources as we would like. It has therefore been found necessary not only in this case but in other Section VII proceedings to get the statistics that are readily available in order to indicate what the direction of the problem is. Now we feel that companies producing 73 percent of the total would be sufficient to indicate the general usage of this type of cable. We don't claim that it is 100 percent statistically accurate but we think it is sufficient for the purpose.

[fol. 164] And for this reason and only for the reason of showing that the overwhelmingly and predominant use of insulated cover wire and cable is for overhead purposes.

The Court: All right. I will receive it over your objection.

(Government's Exhibit No. 443 for Identification received in evidence.)

#### By Mr. Melchior:

Q. Dr. Martin, in connection with your work on these proceedings have you had occasion to prepare a tabulation relating to sales by domestic primary aluminum producers of e.c. electrical conduit pig and ingot?

A. Yes, I have.

Q. Would you identify it?

A: Government's Exhibit No. 444 for Identification, entitled "Sales by domestic primary aluminum producers of e.c. aluminum pig and ingot and e.c. aluminum rod and bar to non-integrated producers of aluminum conduit wire and cable, and to other firms, 1956 through 1959."

Mr. Melchior: The government offers Government's Exhibit 444 for Identification into evidence at this time.

Mr. Bergson: Your Honor, the defendants object to Government Exhibit 444 for Identification for a variety of [fol. 165] reasons. One, we object on the ground of relevancy because we do not believe that there is an e.c. aluminum pig or ingot market.

Further than that, we object that the chart is misleading and incomplete because it fails to show sales of e.c.

aluminum pig by foreign producers and by non-integrated domestic users. There are companies in the field, in the United States which are not integrated, which sell e.c. aluminum re-draw rods. They are not included in the chart. The Aluminum Ltd. of Canada supplies tremendous amounts of pig and ingot to the United States, a considerable portion of which could be designated e.c. aluminum pig.

It is our position that what is sold by the particular producers is a grade of pig and that there can be no distinct market for e.c. aluminum pig and that any chart relating to e.c. aluminum pig is immaterial, irrelevant and mis-

leading.

The Court: Perhaps the witness ought to explain before I try to guess at this anything more about this chart that he wants to. If Mr. Bergson's statements are right, wouldn't this exhibit be somewhat misleading? For infol. 166] stance, the Canadian concern sells to non-integrated producers in the United States. Wouldn't a more accurate table be prepared containing reference thereto?

Now he also states that the integrated or the non-inte-

grated producers do sell some ingot or some pig.

Mr. Bergson: Rod.

The Court: Rod. Why shouldn't that be included here? Mr. Bergson: Yes.

Mr. Melchior: May it please the Court, may I make a few remarks there?

The Court: Yes.

Mr. Melchior: In the first place, Your Honor, we expect to show by other testimony in this case that e.c. aluminum pig and e.c. ingot are a special type of ingot, utilized for the purposing of making conduit wire and cable. Ordinary aluminum pig and ingot and alloy pig and ingot of most varieties are not suitable for this purpose.

We feel that e.c. pig and ingot, which is a term generally recognized and understood in the trade is the basic raw material used for making electrical conduit wire and cable of the aluminum variety which we think is the very heart

[fol. 167] of this case.

Now we have attempted to show here what there is available by way of e.c. pig and ingot to domestic non-integrated producers who must purchase these supplies on the open

market, and we feel that wis extremely desirable that this supply be available to them from domestic sources. I don't think competition in an American industry should have to depend upon foreign markets for its continuing competitive life. Now it is true there are makers of Canadian aluminum; there are makers of foreign aluminum. We think, we can demonstrate by figures the approximate share of the market this is. And we can demonstrate that within certain bounds. The figures are not complete.

But I can't urge too strongly that small American business should not be called upon to depend on foreign markets for their continuing life. This is the reason we didn't

put them in but we can show this collaterally.

The Court: Well the first part of that is probably all right, but this does not represent the exact situation, does

[fol. 168] Mr. Melchior: Are you directing your remarks to that made available by domestic producers?

The Court: Yes.

#### By Mr. Melchior:

Q. Dr. Martin, I will ask you this question. Do you have any information which will indicate how much rod may be available to the non-integrated wire and cable purchaser from domestic source or do you have information as to how many such companies there are in this category who supply e.c. aluminum rod but are not primary producers?

A. No, I don't think I have.

Q. Let me ask you this question, Dr. Martin. How many domestic primary producers of e.c. ingot are there in this country?

A. Six.

Q. There are six. Now do these six producers of ingot also supply rod?

A. Yes.

Q. Now are there companies who purchase the ingotstrike that. Are there domestic companies who purchase aluminum ingot and convert it into rod, aluminum rod, for sale to aluminum wire and cable companies? Now by this question I am referring, I mean companies who are not primary ingot producers themselves?

A. I have no information on this in my tabulations. I

V ..

[fol. 169] have in my recollection of the sources with which I work, I found only very slight reference to such sales. But I believe Rome Cable Corporation sold a very small amount of e.c. re-draw rod in some years. I have some information on that in another tabulation showing Rome's purchases and sales and manufacture of e.c. rod. The table here shows I think what the total says it shows. I know of no information that would be relevant to what I say in the total I am demonstrating here that hasn't been included.

The Court: But it does not show, does it, the total e.c. aluminum ingot purchased from any source or all sources by non-integrated producers?

The Witness: No, Your Honor, it doesn't. I have an-

other tabulation that will be presented later.

The Court: That may help.

The Witness: That gives that information for one

year from government publication by B.D.S.A.

Mr. Melchior: I think, Your Honor, this is another one of those tabulations in that same category where except for these data there are just no collected published information. The only way of ever making some of these tabulations 100 percent complete would be to subpoena every company in the industry, which I hardly believe [fol. 170] would be required in a Section VII case.

Mr. Bergson: Oh I think though you ought to have an accurate chart and I think we are as aware, or you are as aware as I am that there are other companies who are non-integrated who produce and sell rod in the United States, and that you are as aware as I am that Canada and foreign sources sell e.c. grade pig in the United States. And to present a chart of this kind I think is misleading.

Mr. Melchior: We are aware that there are foreign markets. We will show by testimony that there perhaps are one or two other companies that do sell that. We do not think that that reflects on the accuracy of this chart. This chart may not be 600 percent complete but it can't be made on the basis of statistics 100 percent complete. But it is offered as material to what it is trying to prove. And insofar as the figures represent it is accurate.

Mr. Bergson: We have never questioned the accuracy of the figures represented on the chart. We told you that,

We don't question the figures represented on the chart, but we do say that the chart as a whole presents a mis[fol. 171] leading picture and should not be admitted in evidence.

Mr. Melchior: Then I think counsel can demonstrate by testimony or evidence as to the weight, but I don't think that relates to the question of admissibility.

The Court: I will receive it with the limitation that I.

think goes with it. I will receive it.

(Government's Exhibit No. 444 for Identification received into evidence.)

#### By Mr. Melchior:

Q. Dr. Martin in connection with your work on this proceeding have you prepared a tabulation relating to purchases of aluminum pig and ingot by Rome Cable Corporation compared with total sales e.c. aluminum pig and so forth?

A. Yes, I have.

Q. Would you identify it?

A. Government's Exhibit No. 447 for Identification, entitled "Purchases of aluminum pig and ingot by Rome Cable Corporation compared with total sales of e.c. aluminum pig, ingot, bar and rod by domestic primary aluminum producers of non-integrated producers of alumifol. 172] num conductor wire and cable and with total receipts of aluminum pig, ingot, bar and rod by non-integrated producers of wire and cable, 1958."

Mr. Melchior: Your Honor, I might point out that I am taking this out of order because of it's close relationship to the preceding tabulation.

The Government at this time offers GX-447 into evi-

dence.

The Court: Just a minute perhaps, off the record.

(Discussion was held off the record which the Reporter was asked not to take.)-

[fol. 173] Mr. Melchior: This is out of order.

The Court: All right, 447. All right, Mr. Melchior.

Mr. Bergson: I object on the ground of relevancy.

Mr. Melchior: If I may interpose, Mr. Bergson, at this

time you didn't object to it. This is one you didn't object to.

Mr. Bergson: This is one that was handed to us last night. Mr. Melchior: My notes indicate there was no objection.

Mr. Bergson: We didn't even talk to you about it.

Mr. Melchior: Perhaps I should explain counsel's remarks, you Honor. In an effort to try to stipulate as many of these facts as we could when we submitted these tabulations to counsel, they made objection and in every case possible we tried to correct and change these tabulations. This accounts for counsel getting it at a late date, and we apologize.

The Court: But apparently he has a right to object.

[fol. 174] Mr. Bergson: I got this about 9:30 or 10 o'clock last night.

Mr. Melchior: We regret that.

Mr. Bergson: I object on the ground of relevancy as expressed in relation to the previous exhibit, namely, that there is no E.C. pig ingot and rod market and that is not a relevant market, and I also invite your Honor's attention to the difference between B and C, and I think this helps to illuminate Chart 444, was it? The one we were just talking about because we have in B total sales to E.C. aluminum pig ingot by domestic primary producers to non-integrated of 33 million pounds, and we have total receipt of 69 million pounds. I think that that illustrates the deficiencies in this previous chart.

# By Mr. Melchior:

Q. Dr. Martin, can you explain the difference between the figures which counsel has just mentioned, the 33,000 figure and the 69,000 figure?

A. Yes, sir.

Q. I might ask you to express the total import of the

chart at the same time, if you will.

A. This is the Chart I referred to in answer to the [fol. 175] question when we were discussing the last one. This is all the information I have on the import question. Part of this difference is undoubtedly accounted for by the imports. I have no figures on the imports. This is one explanation and one reason for putting this chart in at a late date as far as I was concerned was to get this informa-

tion in so that as much as possible was put in. There is a difference, however, between the two, that is accounted for by the definition. The sales of E.C. aluminum pig by domestic primary aluminum producers are sales to non-integrated producers of conductor wire cable, whereas receipts by non-integrated wire producers are receipts by non-integrated conductor and also non-conductor wire and cable producers. The receipts are from the Business and Defense Services Administration publication listed in the source which lumped together conductor and non-conductor aluminum wire receipts.

Q. And what, Dr. Martin, was your purpose in listing both of these figures and showing percentages relating to both of these figures? Was it not through a hyper abundance of caution, to make sure the benefit of the doubt was given to the Defendant by showing the largest figure you [fol. 176] could find and the smallest and setting forth a ratio in order to show Rome's position? Is that your

purpose?

A. Yes.

Q. In other words, Rome's position was either four and five-tenths per cent or nine and five-tenths per cent depending on which universe you use.

Mr. Bergson: This is another case of mixing apples and oranges and I think it supports my argument there is no E.C. aluminum pig ingot market. I feel sorry for Dr. Martin, he had to throw this chart together, but after all, this is a lawsuit and the chart should have been prepared properly and it shouldn't be admitted in evidence just because he had to put it together in a hurry. If it is inaccurate, if it's unreliable, it should—

Mr. Melchior: Counsel, I thought counsel said they didn't challenge the accuracy of the other figure.

Mr. Bergson: We didn't challenge the accuracy of the figures stated therein.

The Court: The figures are not all in.

Mr. Melchior: We admit they are not all in, Your Honor, but we submit they are not necessary.

[fol. 177] The Court: Gentlemen, I am a little bit lost but I am hopelessly lost on this exhibit. I don't know what it

means. Can you tell me in simple English what it means,

what this chart purports to show?

The Witness: I think, sir, that it purports to show the magnitude of Rome's purchases of aluminum pig and ingot compared with information available and total purchases by Rome, as well as on other non-integrated conductor wire and cable firms of this raw material. It indicates, I think, the relative size of Rome as a producer of—

The Court: Suppose, for instance, Rome bought 50 per.

cent of their aluminum pig ingot from Canada.

The Witness: This would be included in Rome's figures. This is a figure that gives the total purchases of aluminum pig and ingot by Rome from whomever they bought it.

The Court: Yes. What you are comparing it with doesn't include Canadian ingots, how could you get an accurate ...?

The Witness: I think that the middle figure clearly ob-[fol. 178] viously does not include Canadian ingot but a later figure, I think does include Canadian ingot.

Mr. Melchior: If I suggest what we have in mind, it may clarify it. We urge as you recall in our opening remarks that Rome Cable Corporation was a substantial independent corporation in the field of wire and cable, and that its elimination was in violation of Section VII. We are trying to show by another manner the importance of Rome on a domestic field. We are trying to show what Rome's position was among the other non-integrated aluminum wire and cable corporations. Trying to show how significant they were not only in the copper field, which we will show later but in the aluminum field. You recall our remarks indicate Rome had just moved into the aluminum field as an embryo. These figures purport to show how much aluminum pig and ingot and rod of an E.C. grade which is the line of commerce we urge the raw materials line of commerce that Rome bought and compare Rome's purchases with purchases of the other non-integrated, and we think this chart demonstrates that if we use all the receipts [fol. 179] of the non-integrated companies, if we used the smallest universe. Rome would have had 10 per cent of that market. If we used the largest universe which includes imports as well as a large portion of non-conductor wire, which is not even relevant—we have leaned over so

far backwards we have included in our universe nonconductor wire—Rome's position would still represent four and five-tenths per cent?

The simple purpose of this tabulation is to show that Rome was an important non-integrated producer of aluminum wire and copper, a field which the defendants have urged Rome played no part in at all. We submit that four and five-tenths or nine and five-tenths is certainly more than minimal and that is all this chart is to show. We are not trying to prove lines of commerce by this at all.

Mr. Bergson: I hate to prolong this. You will note that in A reference is to Rome's total purchases of aluminum

pig and ingot without reference to E.C.

The Court: We do an awful talking about E.C. but when

you get down here-

[fol. 180] Mr. Bergson: Secondly, in their next chart, Your Honor, they cite Rome's purchases of pig and ingot and in the year 1958 Rome bought 563,000 pounds of pig and ingot from Aluminum, the Canadian Company. \$142,000 worth in the following chart. Now, I don't think its proper for the Government in trying to put a point across to take a bunch of unrelated figures and try to draw a conclusion from them. And I submit, your Honor, this chart—I don't want to go back over all old ground, but I think the chart that was previously admitted should not have been admitted in this case. Irrespective of the lines of commerce.

# By Mr. Melchior:

Q. Directing your attention to counsel's comment that there is a distinction between the title and the line A, the title indicates purchases of aluminum pig and ingot by Rome Cable Corporation compared with total sales of E.C. aluminum. We drop down to A and show total purchases of aluminum pig and ingot. Now, Dr. Martin, is that statement in A correct? Is it properly stated? Were these all their purchases or just their E.C. purchases or is there some other explanation?

[fol. 181] A. I used the figures from the Defendant's answer to Plaintiff's pre-complaint letter dated August 18th. I used the label that corresponded to the way in which the figures were reported by the company. I did that consistently throughout. I didn't tamper with label. If the

letter of the interrogatory answers gave some figures under the label, that is the label I used.

Q. Now, in other words, the 3,000 figure that you had there was given to you by the Defendant, is that correct?

A. Yes.

Q. Now, in connection with your study of this proceeding have you become generally familiar with the products that were manufactured by Rome Cable Corporation prior to the merger?

A. Yes.

Q. Do you know of any product that Rome Cable manufacture that would have utilized aluminum pig and ingot of an E.C. grade for other than aluminum wire and cable?

Mr. Bergson: I object, Your Honor. I think this is be-

vond the witness' competence.

The Court: Yes, I think so. You probably can prove that directly. Let's pass on. I'm inclined to take it [fol. 182] and tell you at the time that I don't think—

Mr. Melchior: We can connect it up, Your Honor.

The Court: Right up to date I don't understand it. I

can do nothing with it.

Mr. Melchior: We hope by subsequent testimony we can clarify the position of this among the others, Your Honor. The Court: Well, all right.

Q. Dr. Martin, in connection with your work in this proceeding have you had occasion to prepare tabulations relating to purchases of aluminum pig and ingot by Rome, total production, use, purchases and sale of aluminum E.C. redraw rod total production sales of E.C. redraw rod, value of shipments of conductor wire and cable, value of shipments of insulated wire and cable and value of conductor wire and cable bare? Have you had occasion during your work to prepare tabulations on those subjects?

A. Yes. I have.

Q. Your Honor, this will be another group coming in at one time. Would you identify them individually.

A. Government Exhibit No. 445 for identification, entitled "Purchases of aluminum pig and ingot by Rome, 1953, to March 31, 1959. Government 446 for identification, entitled "Value of purchases of aluminum pig and ingot by Rome," 1953 to March 31, 1959. Government

ment Exhibit No. 448 for identification entitled "Total production, use, purchases, and sales of aluminum E.C. redraw rod by Rome Cable Corporation, 1953 to June 30, 1959." Government Exhibit No. 449 for identification, entitled "Total production and sales of aluminum E.C. redraw rod by ALCOA, 1953 to June 30, 1959." Government Exhibit No. 450 for identification, entitled "Value of shipments of conductor wire and cable, 1958."

Government Exhibit No. 451 for identification, entitled "Value of shipments of wire and cable insulated and covered, 1958." Government Exhibit No. 452 for identification, entitled "Value of shipments of conductor wire and cable bare, 1958."

The Court: Is that the end of the list?

Mr. Melchior: Yes.

The Court: We will take a short recess before you start.

(At 3:45 p. m. a short recess was taken, after which, the hearing was resumed.)

[fol. 184] Mr. Melchior: May I proceed, Your Honor? The Court: Yes.

Mr. Melchior: At this time the Government offers Government's Exhibit 448 to 452 inclusive for identification into evidence.

The Court: How about 445 and 446?

Mr. Melchior: I will read the numbers, Your Honor. Oh yes. 445, 446, 448, 449, 450, 451 and 452. I offer them in evidence at this time.

The Court: Now why can't we get some kind of a description of them?

Mr. Bergson: I have no objection, Your Honor. The Court: All right. I will receive them.

(Government's Exhibits 445, 446, 448, 449, 450, 451 and 452 for identification received into evidence.)

Mr. Melchior: I was going to have Dr. Martin give a brief explanation of them.

The Court: All right.

# By Mr. Melchior:

· Q. Dr. Martin would you discuss each one of these tabulations individually and point out any salient facts con-

cerning them?

A. Yes. Beginning with No. 445. This is a tabulation [fols. 185-186] of some information all of which comes from the plaintiffs' answers, or the defendants' answers to plaintiff's inquiry. It shows the total amount of pig and ingot purchased by Rome from '53 on to the point of the acquisition, the first quarter of '59.

It breaks down these purchases according to the company from which they are purchased and you will notice includes the purchases from Aluminum Ltd. It is complete with respect to everything that they purchased categorized as

pig and ingot.

The sub-total adds together that which was purchased from firms other than Alcoa. Then the figures of purchase from Alcoa are given and then the total purchased. The numbers here mean thousand of pounds.

The following tabulation, No. 446, is identical except that the numbers are in thousands of dollars of value of the

purchases rather than the physical quantity.

No, skipping over to 448, which is the next one in this group, No. 448 again is taken completely from defendants' answers to plaintiff's inquiry and it shows production of e.c. re-draw rod by Rome Cable Corporation. It also shows the amount of e.c. re-draw rod purchased by Rome broken down again on the basis of the companies from which it was purchased.

[fol. 187] The purchases are added together giving the total purchases from all companies of e.c. re-draw rods.

Then the last line, skipping over to the next to the last one, gives sales of re-draw rod by Rome. And derived from the production along with the purchases and sales we are left with the amount of the re-draw used by Rome in the manufacture of wire and cable.

The calculation of this was done in the answers to the plaintiff's letter. I simply took the information and set it

forth out of it.

The Court: Witness, does this mean that in 1958, see if I am interpreting it right, and the first two quarters of 1959 that Rome didn't purchase any re-draw rod?

The Witness: Yes, Your Honor. They purchased none and they sold a little bit. And from the production you get the amount that was left. All purchases are shown here.

The Court: Does this mean that for instance they didn't purchase anything from Alcoa since 1954?

The Witness: Yes, Your Honor.

The Court: All right. Purchase any rod.

The Witness: Re-draw rod:

A. (Continuing) The following tabulation, No. 449, is [fol. 188] concerned with the production and sales of aluminum e.c. re-draw rod by Alcoa covering the period for which I had information in that regard, in the answers to plaintiff's letter. The first line gives total aluminum e.c. re-draw rod manufactured. Included in this during the first four years was some rod manufactured on a toll basis. This is listed separately and subtracted from the first line to give the amount of rod manufactured for themselves or to sell.

The Court: What does "toll basis" mean?

The Witness: This is my understanding, Your Honor, that this means that some other firm paid Alcoa a fee to process aluminum that they supplied to Alcoa.

The Court: I see.

A. (Continuing) The last line here shows the amount of rod sold by Alcoa to other companies.

No. 450 shows the value of shipments of conductor wire and cable in 1958. Now this is a new term that is appearing on this table for the first time as we have gone through. Conductor wire and cable as it was used includes both insulated and bare and both copper and aluminum. This table gives the total shipments during this year 1958 taken from the census, Bureau of Census publication, the 1958 census of manufacturers. And comparable figures from Aluminum Company of America and Rome Cable Corpora-[fol. 189] tion and the Rea Magnet Wire Company. These are set forth in detail to show the three added together. And each of these is taken as a percentage of the industry total and put in the next column.

The following two tabulations give the breakdown of this category, conductor wire and cable into insulated or covered and bare. Insulated or covered wire and cable, both copper and aluminum shipments, are shown in 451 and in 452, the same information for copper and aluminum conductor wire and cable bare.

I believe that is the last one of the group.

[fol. 189a] Mr. Melchior: Very well.

Q. Dr. Martin, have you discussed 451 and 452?

The Court: Yes.
The Witness: Yes.

Mr. Melchior: You have. Fine. If the Court please, I am not going to introduce at this time the next two. I would like to introduce as a group the following.

Q. Dr. Martin, in connection with your work on this proceeding have you had occasion to prepare tabulations relating to the value of shipments of conduit, sales of steel and aluminum conduit, value of shipments of aluminum conduit, and similar tabulations?

A. Yes, I have.

Q. Would you identify them?

A. Government No. 455 for identification entitled "Value of shipments of conduit in the United States 1960." Government No. 456 for identification entitled "Sales of Steel and Aluminum Conduit, rigid and E.M.T., in the United States by ALCOA, Rome in the industry 1960." Government Exhibit No. 457 entitled "Sales of steel and aluminum conduit, rigid and E.M.T., in the United States by ALCOA, Rome and the industry 1960." Government Exhibit 458 for identification entitled "Value of shipment of aluminum conduit 1960." Government Exhibit No. 459 [fol. 190] for identification entitled "Sales of aluminum conduit, rigid and E.M.T. in the United States by ALCOA, Rome and the industry second half of 1960." Government Exhibit No. 460 for identification entitled "Sales of aluminum conduit, rigid and E.M.T., in the United States by ALCOA, Rome and the industry, second half of 1960 and first half 1959." Government Exhibit No. 461 for identification entitled "Sales of steel conduit, rigid and E.M.T., in the United States by Rome Cable Corporation and the industry 1958 and first half 1959."

Mr. Melchior: The Government at this time offers-

Mr. Bergson: May I interrupt here please, Mr. Melchior?

Mr. Melchior: Yes.

Mr. Bergson: Your Honor, our charts are a little bit jumbled on this because of the substitution of charts and I would appreciate it very much, Mr. Melchior, if instead of offering them as a group, you would offer them one by one.

Mr. Melchior: I will offer them one by one: Be happy to.
Mr. Bergson: Permit me to state my objection at this
time rather than waiting.

[fol. 191] Mr. Melchior: The Government at this time
offers Government Exhibit for Identification No. 455.

Mr. Bergson: Your Honor, the Defendant objects to Government Exhibit 455 on the ground that in our view the universe figure as taken from the census is inaccurate and misstates the total value of business done in the United States in these E.M.T. and aluminum conduit. Understates them. Unfortunately we are not prepared and will not be prepared in our case to show the exact amount, but we will show that they are understated.

The Court: Well, I will receive it, giving it what weight

I think it is entitled to when we get down to it.

Q. Dr. Martin, will you explain the import of Government Exhibit 455?

A. Yes. This table shows shipments of conduit in the United States in 1960 in dollar value terms; thousands of dollars. This set of figures comes from the United States Census of Manufacturers. The defendants supplied plaintiff with information on the same definition for ALCOA and Rome. That information is set forth—shipments by ALCOA and Rome compared in percentage terms with [fol. 192] the total shipment of conduit in the United States as reported by the census. The figure for conduit that I have used in the census is defined precisely in the Footnote No. 1 as being a combination of four census categories—rigid conduit, steel and other electrical metallic tubing, steel and other.

Aluminum, included in the other along with any other metallic conduit that might be, so we don't have any further breakdown on that. The figure on that is written in, I might say, on the chart by hand. It is a revision of the census figure we received just yesterday in a letter from

the census, giving us the latest revised figure that is being published in the final bound copy.

Q. Would you explain to the Court the import of the letter we received from the census. What was the occasion for our receiving that letter from the Bureau of Census?

A. We received information from the defendant that they might object to the accuracy of the census universe figure, so we called the people in the Census Bureau and wrote a letter to the people in the Census Bureau, asking them to give us any information that might have been de-[fol. 193] veloped since the publication from which I took it out of the current latest figures we have. In other words, for our census universe figures for the whole United States sales of conduit. The very latest, best information that the Bureau of the Census was able to supply.

Q. Has a copy of that letter been made available to Defendants, to your knowledge?

A. Yes, it has.

Mr. Melchior: The Government at this time offers Government Exhibit for Identification No. 456.

Mr. Bergson: Defendants object to Government Exhibit 456 on the ground that the industry total reported by NEMA is on its face less than complete and does not show the proper universe. The source bulletin from which this was taken shows the number of companies reporting and the number of companies reporting were far less than the number of companies making the product. It is our view that the industry total as represented to NEMA is a correct statement of what was reported to NEMA. It is completely meaningless so far as this case is concerned be[fol. 194] cause there was an awful lot not reported. This is indicated by the fact that the NEMA total is nine million dollars less than the census figure, and we think the census figure is understated.

Q. Dr. Martin, would you state for the Court the purpose of this tabulation?

A. This tabulation was made in an attempt to get all the possible information on the subject after I was informed that the Defendants were questioning the validity of the census universe. I obtained the publication of the National

Electrical Manufacturers Association, and found that they had some information on conduit sales in the United States and I tabulated them in a way comparable with the previous tabulation that gives the same thing with the census as the source. This gives as the total sales for the whole country the amount recorded by the NEMA, instead of the census. The figures are somewhat different, but very close.

Q. Dr. Martin, do you know of any other national collection agency of statistics that collects statistics on con-

dust aluminum or steel?

A. I know of no other that collects information on sales or shipments of conduit. I have a tabulation later that [fol. 195] hasn't been—that's in this group—but hasn't been brought up, that deals with shipments of aluminum for and in use in conduit production.

Q. This is not conduit, however. The only two collection agencies you know of are the two you have utilized—the United States Department of Commerce, Bureau of Census, and the NEMA, otherwise known as the National Electrical Manufacturers Association; is that correct?

A. Yes.

Mr. Melchior: We offer that document.

Mr. Bergson: May I add another statement here, Your Honor. We have here the source document from which this was taken, and it lists the participating companies, and of the participating companies not one of the Government's own conduit witnesses is listed.

The Court: Say that again.

Mr. Bergson: It lists—the NEMA report lists the name of the participating companies from which NEMA got this total of 116 million dollars. It lists each company which reported its figures. Not a single one of the companies that the Government has called as a witness in this [fol. 196] case as a conduit manufacturer is listed on this list.

Mr. Melchior: I think I can direct some remarks-

Mr. Bergson: With one exception, the Triangle Conduit and Cable.

Mr. Melchior: Does the Defendant appear in that list, Mr. Bergson?

The Court: You mean Rome, or ALCOA?

Mr. Melchior: ALCOA.

Mr. Bergson: No. Rome Cable.

Mr. Melchior: Were you aware that ALCOA was not listed in this tabulation in this source material when you prepared this tabulation?

The Witness: Yes.

# [fol. 197] By Mr. Melchior:

Q. Have you taken Alcoa's statistics into considera-

tion in preparing any of these tabulations?

A. Yes I have the information contained in defendants' answers to plaintiff's interrogatories on Alcoa's and Rome's shipments of conduit and have added to the amount the total before calculated as the NEMA total the amount shipped by Alcoa shown it its sources. It was ambiguous as to how much might have been left out and I prepared two tabulations to give us alternate additions.

Q. Are these the tabulations among those which you

prepared in the field of conduit?

A. Yes.

Mr. Melchior: Your Honor, directing your attention to counsel's remarks that certain of government's witnesses in the field of conduit or whose companies' names have the word "conduit" in them, I should like to observe that aluminum conduit is a new field and there is nothing in the record to indicate when the government witnesses began or attempted to begin the production of conduit.

Q. The statistics presented in these tabulations cover what year, Dr. Martin?

A. In this tabulation? 1960.

[fol. 198] Q. Are there any tabulations or any sources of material for years earlier than the year 1960 from Nema or from Census?

A. My knowledge is limited to information for a year or two earlier, on steel only but not on aluminum. But I have used that in a separate tabulation and I assume that is true.

Q. No earlier years than 1960 on aluminum conduit?

A. No.

Q. Can you explain why there are no earlier years for which statistics are available on any broad basis from

your knowledge of the aluminum conduit statistical field? I ask you this question, Dr. Martin, do you know of your own knowledge whether the field of aluminum conduit is an old industry or a relatively new industry?

A. My knowledge of the field is limited from what I have seen in the statistics that I have worked with. It would

seem to be new.

Q. Do you know of your own knowledge what-

The Court: Seem to be what?

(The Court reporter repeated the last part of the answer as above recorded.)

Q. You do not know?

The Court: It would seem to be new.

Mr. Bergson: I question the witness' competency to

[fol. 199] answer these questions.

Mr. Melchior: That is why I prefaced my remarks with the "if you know". He said he didn't so I didn't pursue it.

Mr. Bergsen: I would like to ask counsel if he knows whether Channel Master was in existence in 1960?

Mr. Melchior: I was not referring to Channel Master. I think the time to ask the question is when Channel Master is on the stand.

The Court: Well, why not clear it up?
Mr. Melchior: Yes. It was in business.

Mr. Bergson: How about Aluminum Rigid Conduit Corporation?

Mr. Melchior: I can state that Aluminum Rigid Conduit is a very new company in the industry.

Mr. Bergson: How about Hazelwood?

Mr. Melchior: Hazelwood has been in the industry some years earlier. About three years.

Mr. Bergson: I also notice, Mr. Melchior, that in one of your other charts you have a list of companies manufacturing aluminum conduit that don't appear on the Nema list.

Mr. Melchior: May it please the Court I don't think I should be testifying in this case. And I would like to [fol. 199a] correct counsel; these are not my charts. They are Dr. Martin's charts.

Mr. Bergson: I am not asking you to testify. I am raising the question as to validity of the Nema total and these charts are your own and the book of material that you relied on indicates a complete inaccuracy of this chart.

Mr. Melchior: May it please the Court, as argument I would like to point out that the field of aluminum conduit is a very new field. Companies are just beginning to come into it. As a matter of fact when the merger took place Rome Cable didn't manufacture aluminum conduit. There has been little occasion in the industry, as near as we can determine, for the collection of statistical matter on aluminum conduit and as a result the Government has—

The Court: What you are telling me is that there has been little and this chart isn't much good to anybody.

Mr. Melchior: No, I don't think so.

The Court: It is the same thing. You tell me in one breath there is little opportunity to cover or gather the statistics.

Mr. Melchior: Prior to 1960. But our year is '60. We have the year 1960 as the first representative year. [fol. 200] The Court: All right. Are those two companies counsel mentioned, are they included in this year 1960?

Mr. Melchior: I don't have that information before me. I have to ask the witness.

The Court: In other words, what in the world do I do with this chart? I am sitting back here trying to figure out what I will do with it. It is quite apparent from the remarks here that it doesn't accurately show this conduit manufacture, the amount of it. I suppose it doesn't do any particular harm but I can't do anything with it after I get it, can I?

In other words with this record standing as it is what importance can I place on that chart?

Mr. Melchior: I think Your Honor that reliance, great reliance can be placed on the Census reports. Now the census reports are collected by the United States Government—

The Court: I know. But this is the Nema chart that we are talking about. My question—I am not very disturbed about this, but sometime I have to lock the door and see what I can figure out, as they come along. I just don't think I can place very much reliance on it if it is a very im-

portant matter. I don't know how important it is to start [fol. 201] with.

Mr. Melchior: As far as what figures are included in the

Census report-

The Court: We are not talking about census total. We are talking about this exhibit, which is the Nema. What can I do with the Nema report when it pretty near is—I won't say constitute—when it is pretty apparent that it does contain the prior date.

Mr. Melchior: We feel that the census report is authority

The Court: We are by the census report. Now we would like to discuss the Nema report.

Mr. Melchior: Since counsel reflected on the cersus report, the census total, we tried to find another universe that would be close.

The Court: I don't question your good faith or your effort. That is not the point at all. The point is what can I do with it as a judge?

Mr. Melchior: I feel that the totals as shown by Nema are so close to the census totals that if the census totals are reliable the Nema totals are probably reliable too. That is the argument we can make.

The Court: Of course it is quite apparent that they are not.

[fol. 202] ° Mr. Melchior: There are differences, yes sir, there are differences but we have given you what we believe to be the best universe in the form of census. And then we have given the only other possible universe in the form of Nema. I feel that there would be no doubt that you would give much greater weight to census but we feel some weight should be given to Nema.

The Court: I am not certain about that. I think I would give none to this. And whatever I can to census. Pretty near everybody concedes that it is not an accurate, true reflection of the situation. That would be my opinion of it. When you are getting down to percentages, sure they are reasonably small. If these percentages become important at all, I think they should be pretty reasonably accurate. I don't know how competent they are at all. You see you are going to argue that this 7.3 is not a minimal percentage. Of course maybe it isn't but when I am told that it doesn't

contain the whole situation why it may very well change from 7.3 to 5.3 or 2.3. I wouldn't know what it would

change in to. You leave me entirely in the dark.

Mr. Melchior: It would be our purpose in calling this witness, Your Honor, to ask for their data for the years that are missing. And we can do it and supply it, but can't [fol. 203] do it at this time. This would be the best we can do short of subpoening everybody in the industry.

Mr. Bergson: Again I don't want to prolong this Your Honor but these are not the only three that are missing.

The government has another chart. Chart 24.

Mr. Melchior: No.

Mr. Bergson: Conduit shipments.

Mr. Melchior: Have we offered that, Mr. Bergson!

Mr. Bergson: No. But I am using it to cast doubt, serious doubt upon the reliability of 456. The Anaconda Aluminum Company reported shipments are not included. The Harvey Aluminum Company are not—I beg your pardon, Harvey is, but there are seven companies names on your companies reporting to the Aluminum Association that are not named as companies reporting to Nema.

Mr. Melchior: Now if Your Honor wishes to discuss this next chart I will at this time, because I think counsel is completely in error as to the accuracy of this chart.

The Court: Go ahead.

Mr. Melchior: The second chart would be Government's Exhibit 464 for identification. I ask you to turn to that and still hold the chart we are talking about and you can immediately see the difference. They are not the same prod-[fol. 204] uct. We have been talking in 456 with respect to steel and aluminum conduit. Over here we are talking about shipments of aluminum semi-fabricated products for end use in the manufacture of rigid aluminum conduit. This is another conduit tabulation. These are the raw materials used in manufacturing conduit. So there is no relationship between the charts at all.

These companies listed in 464 are raw material suppliers to companies who manufacture conduit. Now maybe some of these companies do manufacture conduit but there is nothing in the record that they do. In fact many of them don't. They merely sell the raw material. They sell the semi-fabricated products.

Mr. Bergson: I accept that. I apologize.

Mr. Melchior: So you can't compare this chart to the other.

Mr. Bergson: I accept that: I apologize.

Mr. Melchior: That is quite all right.

Mr. Bergson: However I don't apologize for the inac-

curacy of the Nema universe.

Mr. Melchior: The government won't concede it is inaccurate. The government will concede it is not complete. [fol. 205] The Court: You won't concede it but you do admit that conduit manufacturing companies figures are not all included.

Mr. Melchoir: I admit that.

The Court: All right, I am going to take it.

Mr. Melchior: We will try to add to the weight of it by

further testimony.

The Court: See that you do. I will tell you frankly on the evidence up to date I will give it no consideration whatsoever. No probative weight. I will receive it.

(Government's Exhibit 456 for Identification received

into evidence.)

Mr. Melchior: The government now offers Government's Exhibit 457 for Identification.

Mr. Bergson: Your Honor that is subject to the same infirmity. They use the same Nema total.

The Court: All right. Same disposition.

(Government's Exhibit No. 457 for Identification received in evidence.)

Mr. Melchior: Government now offers Government's Exhibit 458 for Identification.

The Court: That goes back to the Census figure. Mr. Melchior: Yes sir, it does, Your Honor.

Mr. Bergson: Would you pardon me, Your Honor?

The Court: Sure. Go ahead.

[fol. 206] Mr. Bergson: We object to this on two grounds. One, the inadequacy of the Census figure, and two, on the ground of relevancy because we contend that aluminum conduit does not constitute a separate line of commerce.

The Court: All right, I will receive it.

(Government's Exhibit No. 458 for Identification received into evidence.)

By Mr. Melchior:

Q. Dr. Martin would you explain the import of Government's Exhibit 458?

A. Yes. This shows the volume of shipments of aluminum conduit in 1960 with the industry total as reported by the Census of Manufacturers. Compared with the shipments of Aluminum Company of America and Rome. The sales by Rome in 1960 are indicated in the answers to interrogatories to be sales made by Rome as agent for Alcoa. The breakdown between Alcoa and Rome shows Alcoa's sales exclusive of Rome agency sales and in the next category is the Rome sales which were made as agent for Alcoa. And then the two together on the third line give the total sales, giving the total sales of Aluminum conduit by Alcoa and Rome. The figures are in dollar value term.

Q. And these figures are based on figures of the Bureau of Census?

[fol. 207] A. Yes.

Q. The data on this. Not on Nema?

A. Not on Nema.

Mr. Melchior: Now the Government would like to offer as a group of three Government Exhibits 459, 460 and 461 for Identification, since I am sure counsel will have the same objection to these three, and these three are all based on Nema.

The Court: These all come back to that Nema report as a basis.

Mr. Melchior: I beg your pardon?

The Court: All of these last three exhibits use the Nema report!

Mr. Melchior: They do.

The Court: As the basis for their computation. Same objection, I take it?

Mr. Melchior: Yes, Your Honor.

The Court: Well, same ruling, I will receive it.

(Government's Exhibits 459, 460 and 461 for Identification received into evidence.)

Mr. Bergson: Plus the fact, Your Honor, that 459 and 460 are also objected to on the ground that the line of com-

merce is aluminum, which we contend to be an irrelevant [fol. 208] line of commerce.

The Court: All right.

Mr. Melchior: Of course we don't feel that is a valid objection, Your Honor.

The Court: Would this be a good place to stop? Recess

until tomorrow morning, ten o'clock.

(Whereupon an adjournment was taken to Wednesday, February 7th, 1962 at 10:00 o'clock a.m.)

### Transcript of Hearing-February 7, 1962

[fol. 211] Mr. Melchior: Dr. Martin, will you resume the stand?

DAVID D. MARTIN, resuming the stand, testified further as follows:

The Court: I guess we got down to 461.

Mr. Melchior: I think we had completed that, Your Honor. I was going to proceed with the next one.

Direct examination. (continued)

### By Mr. Melchior:

- Q. Dr. Martin, in connection with your work with the Anti-Trust Division have you had occasion to prepare a tabulation dealing with sales by ALCOA and Rome of steel and aluminum conduit?
  - A. Yes, I have.

Q. Would you identify it?

A. Government's Exhibit No. 462 for identification.

Q. Would you raise your voice a little better?

A. Government's Exhibit No. 462 for Identification, entitled Sales by ALCOA and Rome of Steel and Aluminum Conduit, 1954 through 1960 in the United States and in the eleven Western States."

[fol. 212] Mr. Melchior: The Government offers Government Exhibit for Identification 462 at this time.

Mr. Bergson: The Defendant objects to Government's Exhibit 462 on two grounds. One, that the defendant does not recognize the 11 western state area as an appropriate section of the country so far as conduit is concerned, and secondly, because while the footnotes tend to clarify it, the figures for 1959 and 1960 on aluminum conduit are misleading because they are stated twice. The figures ascribed to Rome are also included in the ALCOA figures, creating

the erroneous impression, No. 1, that there was more aluminum conduit sold than there actually was sold and, secondly, that Rome manufactured aluminum conduit, or manufactured any substantial amount of aluminum conduit.

The Court: Suppose I take the explanation of this exhibit from the witness before we go into the details of your

objection.

# By Mr. Melchior:

Q. Dr. Martin, would you explain to the Court first the source of the information contained in this tabulation? [fol. 213] A. Yes. All of the information on this tabulation is taken from Defendants' answers to Plaintiff's interrogatories and Defendants' answers to Plaintiff's precomplaint letter and some changes were made on the basis of the Defendants' objections to Plaintiff's proposed tabulations, and have been incorporated.

So all the information is that given to me from the docu-

ments from the plaintiff.

Q. From the Defendant?

A. From the Defendant.

Q. You mean, from the Defendant. Where were the changes! You refer to some changes being made. What was the source of your information as to these changes!

- A. The original tabulation presented to the Defendants was based on information from the interrogatory answers which gave more than one figure for some of these years. And I had picked a figure that I thought was comparable. In one or two cases they presented some new figures at that point, which I incorporated in the amendment of the tabulation.
  - Q. And where did you get the new figures from?

A. From the Defendants.

Q. From the Defendants?

A. From the Defendants.

[fol. 214] Q. Now, Mr. Bergson mentioned in connection with this tabulation something with respect to an apparent overlap, I don't recall the precise phrase he used—duplication I believe; do you understand his reference to that and would you explain it to the Court?

A. Yes. The figures for conduit, aluminum conduit sales

after the acquisition given in the source material indicate that Rome sold aluminum conduit as the agent of Alcoa. The defendant's interrogatory answers presented figures for Alcoa sales, including Rome's agency sales. I did the same thing on the tabulation. The defendants in the interrogatory answers also in answer to the question: "Did Rome have any sales!" gave the Rome agency sales with the indication that these were included in the Alcoa figure. I did precisely the same thing on the tabulation, with footnotes indicating that the figure for Alcoa sales include the Rome sales and a footnote on the column marked "Aluminum" under "Rome" on the righthand side, where I give Rome sales, footnote No. 9, explains that Rome's aluminum conduit sales were made as agent for Alcoa and are included in the Alcoa figures.

The figures are exactly the way they were presented from the defendants.

Q. In other words, what you are saying is that the alleged duplication that counsel refers to is presented here in [fol. 215] exactly the same manner it was presented to plaintiff by defendants in their responses to interrogatories, is that correct?

A. Yes, I think so.

The Court: Well, what it all means is that the figures for 1959 and 1960 do not indicate the steel and aluminum conduit that was manufactured by Rome and Alcoa, that is, it doesn't separate them. Maybe they used the same sales force.

The Witness: I think, your Honor, that the aluminum conduit sales in 1959 and 1960 are intermingled in the sense that it is difficult for me to say precisely what was produced and sold by Alcoa, what was produced and sold by Rome. All I had to go on was the answers the defendants gave to the question, and they gave it in this form, Alcoa's total sales, a sub part of that what they labeled as Rome sales as agent for Alcoa.

### By Mr. Melchior:

Q. In other words, subsequent to the merger, based on the information given to the Government by the defendants, it is difficult for the Government to tell precisely who was making or shipping the conduit, whether it was Rome or [fol. 216] Alcoa.

A. That's right.

Q. But actually it doesn't make that much difference because at that time they had become one.

Mr. Bergson: I think, your Honor, we are being blamed because they asked us the wrong questions in the questionnaire.

The Court: The way you answered it doesn't affect the validity of their exhibit. If they have used your answers as indicating on an exhibit—if they aren't valid, it isn't

valid no matter where they got the information.

Mr. Bergson: My point, your Honor, is this, that instead of breaking out of Alcoa's sales the sales that they charged to Rome, they included the sales of Alcoa and also plotted them for Rome. Now, the exhibit to have been a proper exhibit, it seems to me should have deducted the Rome sales from Alcoa sales or should have included the Rome sales in the Alcaa sales and not specified anything for Rome.

This was all product manufactured by Alcoa and Rome

in those areas and Rome did act as sales agent.

The Court: Yes.

[fol. 217] Mr. Bergson: Now there is a duplication of figures in here and the duplication is the result of the way they asked the questions.

### By Mr. Melchior:

Q. Now, Dr. Martin, do you cover this in the footnotes to this tabulation?

A. Yes, I think so.

Q. Is it clearly set forth precisely what you have done?

A. I think I have set it forth twice.

Mr. Melchior: We submit, your Honor, since it is set forth on the face of the document, that the document is not confusing and misleading.

The Court: It is a little confusing to me. What are you

trying to show by the exhibit?

Mr. Melchior: As you know, your Honor, there are no percentages represented here. We are not trying to show the share of the market or the section of the country, we are trying to show in absolute figures what the sales were of

the respective companies. It is an absolute tabulation. There is no comparison made on here at all, and directing my remarks further to counsel's section of the country [fol. 218] argument, we do not believe that all our tabulations will be limited strictly to a section of the country or line of commerce. We feel the impact of the merger goes beyond that.

The Court: I will have to handle that later, of course, but I am not quite convinced of the value of it. For instance, it shows, doesn't it, that in 1960, say, that Alcoa

sold 4,258 am I right?

Mr. Melchior: Yes, of aluminum.

The Court: Dollars worth of aluminum?

Mr. Melchior: That's right.

The Court: And Rome sold how much, two million?

Mr. Melchior: Rome in steel sold—if you are talking about aluminum—

The Court: Talking about aluminum.

Mr. Melchior: It is in dollars, this table is in dollars, two million point three dollars, but the significant thing about this tabulation—

[fol. 219] The Court: Just a second. That does not mean, and I want that clear, that Rome manufactured and sold this amount of aluminum; does it?

Mr. Melchior: It means that either they did it or in their own name or under an arrangement with ALCOA.

The Court: All right. But how do I speculate about that! What can I do with the figure unless I know.

Mr. Melchior: Well, we do know, we do have the two figures as respects ALCOA and Rome separately.

The Court: Yes.

Mr. Melchior: And we do show by footnote that there is included in both of those figures the stated quantity that we can tell to which side it should belong. So I will admit a stated quantity that we can tell to which side it should belong. So I will admit to that extent there is a slight—we do try to cure that by a footnote. Now if we didn't completely cure it, it is because of the nature of it. We thought on the footnote we could indicate the problem we were faced with.

[fol. 220] The Court: I am at a loss to understand what I am supposed to do with this table. Am I supposed to com-

pare the amount of aluminum sold by ALCOA with the amount of aluminum sold by Rome?

Mr. Melchior: No. I think the significant thing about this table would be the one column under Rome where we show Rome's sales in steel conduit. The aluminum part of this is relatively unimportant in this field.

As you will recall, ALCOA made aluminum conduit prior to the merger, and Rome made only steel conduit. Elsewhere we will show, or have shown, what Rome's share of the total national market was in steel conduit.

Now this column under western states sale for Rome, the 3564 figure, indicates that Rome's, or the majority or the preponderance of the Rome's sales of conduit were in the western state area. Therefore, it is axiomatic that if the preponderant portion of Rome's sales are in the western states, it's share of the western states market must be larger than its share of the national market. And that is the only thing that this tabulation there is to show.

The Court: All right. I will receive it.

[fol. 221] (Government's Exhibit No. 462 for identification.)

Q. Dr. Martin, in connection with your preparation of these tabulations for this proceeding, have you prepared the tabulations relating to the sales of aluminum conduit produced at the Torrance, California plant and with respect to shipments of aluminum fabricated products?

A. Yes, I have.

Q. Will you identify them?

A. Government's Exhibit No. 463 for identification entitled "Sales of aluminum conduit produced at the Torrance, California plant after the acquiration." Government's Exhibit No. 464 for identification entitled "Shipments of aluminum semi-fabricated products for end use in manufacturing rigid aluminum conduit, 1960 and first half of 1961."

Mr. Bergson: No objection, your Honor.

Mr. Melchior: Now this was to 463 and 464?

Mr. Bergson: Oh, I beg your pardon.

.Mr. Melchior: I have not offered it yet.

Mr. Bergson: I am sorry.

Mr. Melchior: I will offer Government's Exhibit No. 463 for identification.

Mr. Bergson: No objection,

[fol: 221a] The Court: Received.

(Government's Exhibit No. 463 for identification received into evidence.)

[fol. 222] By Mr. Melchior:

Q. Dr. Martin, would you explain the import of that document?

A. This exhibit shows the amount of aluminum conduit sold by the Defendants that was produced in the Torrance, California plant of the Rome Company. The figures were taken from the interrogatories answers and I have put in footnote precisely what Defendants said the figures were. In answer to the question of how much aluminum was produced, aluminum conduit was produced at the Torrance Plant, they said in general aluminum rigid conduit customers in the 11 western states are served from the Torrance Plant, and customers in other states are served from the Lafayette Plant. The sales figures were sales figures for the 11 western states, and it was represented to us by Defendants as their best estimate in the amount of dollar value terms as I understand it produced in that plant.

Mr. Melchior: This, again, Your Honor, as you can readily see is merely a statement of data. No comparison made. Off the record for a minute.

(Discussion was held off the record which the reporter was asked not to take.)

[fol. 223] Mr. Melchoir: At this time the Government offers GX-464 in Evidence.

Mr. Bergson: The Defendant objects to Government's Exhibit GX-464 on the grounds that it is irrelevant and immaterial because it relates to products not within any line of commerce contended for by the Government in this case. And, secondly, it is so incomplete and consequently so misleading as to have no value whatsoever.

The Court: Why don't I let the witness explain it and we will see what this is all about.

The Witness: Your Honor, this tabulation attempts to put together all the information that we obtained from the Aluminum Association, to which a number of companies reported their shipments of semi-fabricated aluminum products. And these companies report to the Aluminum Association all of their semi-fabricated aluminum products in a number of different categories. We have taken information for only one of these categories, the category labeled for end use in manufacturing rigid aluminum conduit. And we have the Aluminum Association figure for [fol. 224] the total of everything reported to it in this category on the last line of the table.

And the first line of the table gives the Aluminum Company of America shipments reported to the Association and their correction in the interrogatory answers. They were asked, "What did you report to the Aluminum Association in this category," and they gave us the figure indicated, indicating they had read it erroneously and gave what they presented as a correct figure, and we presented both figures as the corrected total to allow for this correction by ALCOA of its figures. In addition we sent letters to all of the companies that reported to the Aluminum Association and asked them the same question.

We obtained responses from some of them. From some of them we did not obtain responses. I have put all of the information into the table that we were able to gather on the report by these companies to the Association and have indicated where no reply came in, I have indicated that with a "No."

The percentage column shows the percentage division of the reported shipments among the various companies.

[fol. 225] Mr. Melchior: If I may——

The Court: What is the purpose of the Exhibit, Mr. Melchior?

Mr. Melchior: This exhibit relates, as Mr. Bergson says, not to one of our lines of commerce. As I indicated yesterday, Your Honor, in this field of aluminum conduit universe statistics, market statistics are very difficult to come by because this is an area which is still in its embryonic stage.

Most statistics were not collected prior to the year 1960. Since the Government has the burden in this proceeding it made every effort to gather together from any reliable sources it could find statistics which would show some light upon the position of Rome and ALCOA IN the relevant fields. In this connection we contacted the Aluminum Association, which is a recognized association of aluminum companies, located in New York, to find out what information that Association had and whether they had information and data relating to conduit. They informed us that they did not collect conduit data, but they collected information [fol. 226] as to the semi-fabricated form of aluminum that conduit was made from. This being extruded aluminum pipe. They had data for a number of companies, these member companies having reported this information to the Association. The Association, however, as is generally the case, is reluctant to make individual company statistics available to the Government. At that time we wrote all of the members of the Association and asked them to supply to us their individual company statistics which most of them did. .

We did this for the purpose of trying to show the relative position of ALCOA in this very important raw material field. This is the stage immediately preceding conduit. We have figures of ALCOA's position in the aluminum conduit field and we also have figures of ALCOA's relative position in the stage immediately preceding aluminum conduit, albeit we admit somewhat incomplete.

We do, however, feel that enough has been shown here since the major companies are listed, that there is an indication as to ALCOA's dominance. Now we do note, if you [fol. 227] recall the data in the other tabulations, that the percentage indicated there is very close to the percentage we have for ALCOA in the conduit field generally, as indicated by the Bureau of the Census and Nema, which we discussed yesterday.

Mr. Bergson: May I be heard further on this?

The Court: Yes. Yes.

Mr. Bergson: In the first place, your Honor, irrespective of this line of commerce argument, I don't think that the Government in attempting to bolster its case should be permitted to graph statistics partially related, somewhat related, incompetely related, and use them as evidence in a lawsuit of this kind.

Secondly, and I think much more importantly, in addi-

tion to the incompleteness of this chart, which shows that 51 per cent of this Aluminum Association figure is unaccounted for, many of the aluminum conduit manufacturers start from an entirely different product. Many people don't even report to the Association. And this figure is unrelated to reality whatsoever, and the chart in my judgment is absolutely worthless.

[fol. 228] Mr. Melchior: We feel counsel's remarks go to the weight of the document rather than the admissibility,

your Honor.

The Court: Of course there is probably no question but what the figures you have shown here are probably correct from the information that you had, but it is of very doubtful value when half of the industry or half of the product is unaccounted for.

Mr. Melchior: We reluctantly admit that, your Honor, we don't think this has the authenticity that those do that

are complete.

Mr. Bergson: I think it is more than half, that is only half of what is reported. There is a tremendous amount that is not reported.

Mr. Melchior: The only answer to this problem as we see it in Section 7 cases, if there is a burden upon the Government to supply 100 percent industry information, companies are reluctant to make it available to us in many cases and the only alternative is to subpoena everybody in the industry, and, as I mentioned yesterday, I hardly think this is the type of procedure that the courts and government should go through in proving a Section 7 case.

[fol. 229] Mr. Bergson: If the defendant is to be held liable, I think it ought to be held liable on the facts and not on the guesstimates of the Government.

The Court: I will take it with very much misgivings of its value for any purpose.

(Government Exhibit No. 464 marked received in evidence.)

#### By Mr. Melchior:

Q. Dr. Martin, in connection with your preparation for this proceeding did you have occasion to prepare tabulations relating to aluminum ingot capacity, locations of Alcoa, Rome and Rea plants and monthly average prices of electrolytic copper? These are three tabulations.

A. Yes, I did.

Q. Would you identify them?

A. Government Exhibit No. 465 for identification, entitled "Aluminum Ingot Capacity existing or under construction at the end of 1960."

Government Exhibit 466 for identification, entitled "Location of Alcoa, Rome and plants producing aluminum ingot

and wire, cable or conduit products 1960."

Government Exhibit 467 for identification, entitled "Monthly average prices of electrolytic copper, New York refinery, and ingot aluminum—" Correction; I think I have [fol. 230] got that wrong, "monthly average prices of electrolytic copper, New York refinery, and ingot aluminum at New York, 1940 through 1960."

Mr. Melchior. The Government offers Government Exhibits 465, 466 and 467 for identification into evidence at this time.

Mr. Bergson: No objection, your Honor. The Court: All right, I will receive it.

(Government Exhibits 465, 466 and 467 marked received in evidence.)

### By Mr. Melchior:

### Q. Now, when-

The Court: Are you going to explain them at all?

Mr. Melchior: Yes, I am sorry, I guess I was a little precipitous.

The Court: Or do they require explanation?

Mr. Melchior: Yes.

#### By Mr. Melchier:

Q. Dr. Martin, would you explain to the Court the import of Government Exhibit 465?

A. This exhibit shows aluminum ingot capacity of the six companies which produce primary aluminum in the United States, and gives the total capacity of all of these firms [fol. 231] taken together, and the percentage that each is of the total. The source is the 1960 Minerals Yearbook,

published by the Bureau of Mines of the Pepartment of the Interior.

Government Exhibit 466 is a map taken from the 1960 Alcoa annual report showing the location of certain plants of Alcoa, Rome and Rea Magnet Wire Company. The symbols indicate whether the plant is Alcoa, Rome or Rea, and whether it is a primary producing plant for aluminum ingot or whether it is one of the products, wire, cable or conduit.

The exhibit marked 467 shows prices of primary aluminum and of copper monthly from the beginning of 1940 to the end of 1960 in cents per pound.

The Court: How do you think, counsel, that I will use that last one?

Mr. Melchior: We are utilizing that to show that with respect to the question of price, that there is little similarity between the price of aluminum and the price of copper, first on an absolute basis, and secondly, on a trend basis. I think that you can observe that copper prices over the years are very sensitive and have fluctuated and vacillated quite a bit. On the other hand, aluminum prices have been generally more stable and not sensitive, and there [fol. 232] has been back prior to 1940, as you can see on the lefthand edge of the chart, a reduction in the price of aluminum, and then a long steady period, and then a gradual trend upward.

We also would show by this chart in conjunction with other information that the relationship between the price of copper wire and cable and copper is closer than between the price of aluminum wire and cable and copper wire and cable. In other words, we want to show that copper wire and cable prices are determined by the price of copper rather than the competitive material, and we will indicate that the price of aluminum wire and cable are governed more by the price of basic raw material than they are by the competitive effect of the competitive material.

The Court: All right.

Mr. Melchior: Now, your Honor, yesterday we did not introduce one tabulation which we would like to offer at this time. It is Government's Exhibit 454 for identification.

## By Mr. Melchior:

Q. Dr. Martin, in connection with your work on this proeeeding, did you have occasion to tabulate any shipment figures with respect to service drop cable?

A. Yes, I did.

[fol. 233] The Court: What is service drop table, do you

know, Witness?

The Witness: To me as a statistician, Your Honor, it is a certain category of wire and cable, insulated or covered, that is used by the Census Bureau in collecting its information. The material is used by the Census Bureau and it was used in the interrogatory answers.

The Court: Probably somebody else could answer it.

Mr. Melchior: We will get that by testimony. I would be glad to explain it to you, if you would like.

Mr. Bergson: Are you offering that?

Mr. Melchior: The Government offers GX-454 for identification into evidence.

Mr. Bergson: The Defendants object to GX-454 on two grounds, one is that service drop wire and cable is not a proper line of commerce, it is just one product within the insulated wire and cable line of commerce, and it is an " attempt to take from the line of commerce one construction and make an additional line of commerce out of that.

Secondly, we object on the ground that the Universe [fol. 234] figure is understated and that, therefore, the

percentages shown are erroneously high.

Mr. Melchior: Although it is not our purpose to argue the line of commerce question at this time, we do urge that service drop cable is one of the Government lines of commerce. It is a line included within the broader line of insulated wire and cable, and as the Government conceives this particular line it is a line which includes both copper and aluminum. Service drop table, as we understand it, and we will get testimony on it, is the line which comes from the telephone pole to the individual residence.

The Court: It is a particular product used for a particular thing?

Mr. Melchior: That is our theory, yes, it is generally two insulated wires wound around a bare wire.

The Court: If that is a special line of commerce, couldn't

you possibly break up all the conductor into its particular uses and call them all separate lines of commerce?

Mr. Melchior: I think you could, Your Honor, but we are merely using this as an example of one of the lines in the [fol. 235] broader line, this is one of the lines we think the impact may be greater than in some of the other lines.

Mr. Bergson: Your Honor, it is our position, in addition to the line of commerce argument, that the figures quoted in the census category do not include all types of wire and cable that are used for service drop purposes. He is talking about this twisted wire cable triplex or quadraplex, but open line wire is used for service drop. There is a specially designated service drop cable with underwriters approval that is used. There is a special "K" type of cable that is used as service drop. There are many other kinds of wire and cable than the multiplex cable that he is talking about, and that is included within the census Universe that has—if he wants to break out, and we think improperly, service drop as a line of cable, he has to include in that all the products that are used for service drop purposes.

The Court: Yes, I think that is true.

Mr. Melchior: We differ with that. It is the old question of the Sherman Act versus the Clayton Act.

The Court: No, it is a question of your Exhibit. If this [fol. 236] purports to show service drop cable, it should show any kind of cable that is used for service drop.

Mr. Melchior: We think this tabulation does show service drop as it properly is, and as reported by the census.

The Court: I don't care about the census, you don't include all service drop cable, do you?

Mr. Melchior: We think we include all cable that is properly described as service drop. Now we will admit that other types of wire perhaps can be used for this purpose on occasions.

The Court: And is used?

Mr. Melchior: On some occasions is used.

The Court: This Exhibit to be any good or to prove it.

Mr. Melchior: If we are trying to prove a line of commerce by this Exhibit.

#### By Mr. Melchior:

Q. Dr. Martin, what was the source of your information, your statistical information for this tabulation?

A. The industry total comes from the publication entitled "1958 Census of Manufacturers." I have given in the foot-[fol. 237] note the special census code number for this product class. It is described by the census as service cable, including self-supporting but excluding service entrance cable, divided into two separate categories, rubber insulated and thermoplastic insulated, and those have been added together. The figures that are compared with this census total are figures from the Defendants answers to questions in the Plantiff's pre-complaint inquiry, and I think they correspond to it and are comparable with the industry total.

I have computed the percentage separately for Rome and ALCOA and for Rome and ALCOA put together.

Mr. Bergson: We don't question our own figures, Your Honor.

The Court: You may have to once in a while, but not now.

Mr. Bergson: Not right now.

Mr. Melchior: I think as to whether or not service drop cable and what we have included in this tabulation is

actually service drop cable as a line of commerce.

The Court: I don't think it is, I don't think the Census can make a line of commerce just because it is put in a book. [fol. 238]. Mr. Melchior: I think perhaps we would have to wait until we get testimony from the industry.

The Court: I think perhaps you would.

Mr. Melchior: We have nothing further to offer.

The Court: All right, I will receive it.

(Government Exhibit No. 454 marked for identification received into evidence).

Mr. Bergson: May I ask a question, Mr. Melchior? The Court: Yes.

Mr. Bergson: I notice in this group of charts that you have given us there is another chart, your Exhibit 453. Is it your purpose to offer that now or offer it at a later date?

Mr. Melchior: We are not offering it at this time.

Mr. Bergson: You will offer it later?

Mr. Melchior: We are not offering it at this time.

Mr. Bergson: I was wondering if it was included in the

Judge's notebook.

Mr. Melchior: I think it should be removed. That would be Government Exhibit 453 for identification, Your Honor. [fol. 239] We will have it removed.

The Court: All right.

Mr. Bergson: Are you finished with the witness? Mr. Melchior: Yes, your witness, Mr. Bergson.

Cross-examination.

## By Mr. Bergson:

Q. Doctor Martin, in qualifying you I think Mr. Melchior asked you whether you prepared these tabulations and you responded that you did or they were prepared under your supervision. Is that correct?

A. Yes.

Q. In the course of preparing these tabulations did you confer with counsel for the Government as to the type of chart they wanted and what they wanted in the chart?

A. Yes, I conferred with the Government counsel, I didn't do this independently all by myself, I didn't just go off and do the whole thing.

Q. They told you the type of chart they wanted and what they wanted you to develop in the charts?

A. They informed me of the areas that they thought would be relevant. I made the decisions myself as to what would go in the chart in all cases.

[fol. 240] Q. Did they in discussing this with you set any time periods for you to consider in the charts?

A. I certainly would not say they set any time periods for me. I made the decision on what data was in the chart.

Q. Did they suggest that you consider, say, a five year period before the acquisition, and then the period subsequent to the acquisition?

A. In which particular case?

Q. In respect to any situation.

A. I think that in most cases I used all the data that was available. If I had information on the certain number of

years, ordinarily I put it in unless there was some specific reason to leave it out.

Q. Now I notice that in some charts you went back to 1953 and in other charts you started with 1955, what was the reason for that?

A. I think that where I had 1955 as the beginning year, I didn't have information on all of the items that I needed to complete the chart, and also that I was covering enough years to give an adequate picture of the general structure of the market, which was what I was trying to show.

Q. In this much discussed chart this morning, No. 434, where you didn't have enough information adequately to complete the picture, you went ahead and used the figures [fol. 241] anyway, didn't you, those you had available?

A. Of course, it was not a matter of years.

Q. This was a question of a chart with availability of information or without availability of information, you didn't have much information available for that chart, did you?

A. I had the information, the basic information I had was the Aluminum Company information and the Aluminum Association total, and I think I might well have used that alone, but instead I went ahead because we were able to get some information from other companies to put in that.

### [fol. 242] By Mr. Bergson:

Q. I see. But if you had not been able to get the information for the other companies you would have taken the Aluminum Association total and then put ALCOA's production in and made, determined the percentage of the total production for ALCOA?

A. I never made these decisions very quickly. I would say I would have considered that to have been a proper thing to do if it didn't claim to be anything that it was not.

Q. Right. Now, did you discuss with counsel whether or not you should use a chart with incomplete figures or should not use a period with incomplete figures?

A. I think that by and large I simply tried to make sure that I didn't purport to show anything in any of the charts that I didn't actually show.

Q. Well, now, in your first three charts, which are Gov-

ernment's Exhibits 434, 435 and 436, you start with the year 1955 and you end with the year 1959.

Now, why didn't you use 1954 and why didn't you use

1960 in those charts?

A. Well, I think there are a number of factors that entered into the decision of how to set up this chart, and our purpose was to show the structure of the market for aluminum conductor wire and cable in the period preced[fol. 243] ing the acquisition. I did—

Q. And subsequent?

A. I used the year 1959 even though part of the year was after the acquisition. If I had not used it, I would have been leaving out part of the years before the acquisition. And I didn't have this broken down on a monthly basis.

Q. On a what basis?

A. On a monthly basis. I had some part of the information, but I don't think I had quite all the information on everything. My basic reason here I had for showing these years is that I thought a period of five years was enough to avoid any distortion that might enter in from us having picked a year of recession or a year when the economy was declining or booming. By keeping the span to five years I thought that element of time would give the picture.

Q. Was not the purpose of this chart to show ALCOA and Rome's position, or these three charts, in various phases of the aluminum wire and cable industry both before and

after the acquisition?

A. I think that on these three charts I was working with information that came from a number of companies who had written, responded to letters from the Department of [fol. 244] Justice, that had been written at an earlier part of this proceeding, and to have gone further into 1960 would have required that I rewrite a letter to all of these companies to bring all of this information up to a recent point. This could have been done in many points—

Q. Had you had-

Mr. Melchior: May the witness finish the answer?

Mr. Bergson: I thought he had. I'm sorry. Had you finished?

The Witness: I was going to say I had to have an end point. What I did was to take the answers from the companies that we had and in some cases I had information for different years, some of the letters had been answered more recently than others. I wanted to get a comparable study and I felt that it was relevant because it did come up through and including 1959, which was the year when the acquisition took place. I thought it went back far enough to get a picture of the situation prior to the merger, that would allow for any special circumstances which might have been for this one year.

[fol. 245] Q. You had figures for 1960 for the universe?

A. Yes, sir, I did, I believe.

Q. And you had ALCOA's and Rome's figures for 1960; didn't you?

A. Yes, sir, I think so.

Q. And you had Universe figures for 1954, didn't you?

A. My offhand recollection is that I did. I would have to check.

Q. I would think you will find that you did. And you had ALCOA's and Rome's figure for 1954 to 1960—I mean for 1954.

A. I think so.

Q. The Government was interested enough in these figures to that in their inquiry to ALCOA and Rome they put

us to the trouble of furnishing those figures?

A. I think that the case was proceeding over a rather long period of time. The beginning of it an attempt was made to gather figures on a period that was starting earlier. As time went on, other figures came into the picture. We had figures from some places, questions had been asked in some cases for earlier years.

Q. You had figures from a lot of the companies for 1954?

A. I couldn't say from memory how many I had for 1954: [fol. 246] Q. And you had figures for some of the companies for the first quarter of 1960?

A. I think so.

Q. Most of the companies that you have on this list?

A. I am not sure whether for most of them or not.

Mr. Melchior: May it please the Court, may I advise the witness that he can refresh his recollection by the book in front of him. I think I should point out that all of the raw material he used has been submitted to Defendent and they

are fully aware of any piece of raw material that is in that book. And the witness should refresh his recollection.

Mr. Bergson: That is why I am asking these questions, because I have the information that you furnished us right here.

The Witness: To answer the question of whether or not I had figures for the first part of 1960 and most of these companies, I will have to look at the letter from each of these companies to see if the figure was there for the first part of 1960. I remember a good number of these numbers but I don't remember that much to be able to say.

Q. But in any event your decision not to use them was [fol. 247] based on your decision that five years was enough?

A. It was based on that, along with consideration of all

the data I had, whether I had it on all of them.

Q. It wasn't based on the fact that in 1954 ALCOA's share of the market was higher than it was in 1955, or that in 1960 it was smaller than it was in 1959; was it?

A. No, sir, it was not.

Q. You know for a fact whether or not Alcoa's share was higher in 1954 than it was in '55?

A. In all of the three lines? No, I don't know it as a fact.

I don't recall it.

Q. Let's take Government Exhibit 434, which is your Chart No. 1.

A. Yes.

Q. Which relates to shipments of aluminum conductor wire and cable, 1955 to 1959.

A. I don't remember what ALCOA's share was.

Q. Maybe I car refresh your recollection.

A. I would have to have the interrogatory answers. I have the Universe figure and the source.

Q. What is the universe?

A. 172,175,000. Is that what you have? As to ALCOA's figure I can find it in the interrogatory answer.

[fol. 248] Q. Maybe I can help you and save a little time.

Mr. Bergson: May I have marked for identification as

Mr. Bergson: May I have marked for identification as AR-1.

Mr. Melchior: May we have a copy of that exhibit?

Mr. Bergson: You have it.

Mr. Melchior: Will you designate it?

(Discussion held between counsel.)

Mr. Bergson: This is a chart, entitled "Shipments of aluminum conductor wire and cable by primary producers or affiliates including merged companies and other producers, 1954 to 1960."

Now, this chart has been submitted to Government counsel and they have not questioned the accuracy of the figures

herein.

(Chart marked as Defendents' Exhibit AR-1 for identification.)

By Mr. Bergson:

Q. Now, would you look at that chart and see what percentage of the market it shows for ALCOA for the year 1954? This corresponds to Government's Exhibit 434.

Mr. Melchior: Counsel, you have not offered this yet? [fol. 249] Mr. Bergson: I am not offering it.

Mr. Melchior: Will you wait until we get it. We didn't

know you were going to use this:

Mr. Bergson: I am just using it to save a little arithmetical computation by the witness.

A. Yes, 42.8 per cent.

Q: And what was Rome's share in 1954?

A. 1.1 per cent.

Q. As compared with 36.6 per cent and 1.3 per cent in 1955?

The Court: 1.5.

Mr/Bergson: 1.5. Yes. I am sorry. It is the wrong glasses.

Q. 1.5!

2

A. Yes, sir.

Q. Right?

A. Yes, sir,

Q. And what does that chart show as ALCOA's share of the market for the year 1960?

A. 25.4 per cent and for Rome 1.2 per cent.

Mr. Melchior: May it please the Court, what document are you referring to, Mr. Bergson. What pre-trial docu-

ment are you referring to, Counselor? Did you say D-13 [fol. 250] or D-14?

Mr. Bergson: I said D-13.

Mr. Melchior: Your Honor, according to our records, and we have a copy of our objections to their interrogatories, and our records indicate that we objected to Defendants' pre-trial D-13, which seems to be the same document that counsel now has designated as Defendants' AR-1.

Mr. Bergson: For identification. Mr. Melchior: For identification.

Mr. Bergson: Your Honor, that objection-

The Court: What is the objection?

Mr. Melchior: I am trying to see what it is, Your Honor. Well, you may proceed with your interrogation, Counselor.

Mr. Bergson: Just so the record will be clear, that objection is based on the fact, Your Honor, that in making this chart we lumped with the primary producers the acquired companies in the years prior to the acquisition. But this has nothing to do with the figures I am referring to.

The Court: There couldn't be any dispute about what

you are talking about now.

[fol. 251] Mr. Melchior: You are talking only about ALCOA and Rome?

Mr. Bergson: Yes.

Mr. Melchior: All right. Go forward.

# By Mr. Bergson:

Q. So that, to get back to where we were, on your chart it shows, Government Exhibit 434, it shows ALCOA's and Rome's percentage of the market declining from 38.1 per cent in 1955 to 28.5 per cent in 1959.

The Court: Wait a minute. Are you talking about 434, Mr. Bergson?

Mr. Bergson. 434, yes, sir. That is the total for Alcoa and Rome.

The Court: Oh, the totals.

Mr. Bergson: Yes. .

The Court: I beg your pardon. Go ahead.

### By Mr. Bergson:

Q. Now if you had included the years 1954 and 1960, the range would have been from 43.9 per cent to 26.6 per cent; is that correct?

A. I haven't checked for sure on these figures, but taking

them as proper arithmetic, yes.

Q. And since the last figure prior to the merger with the combined total was 29.1 per cent ALCOA's "dominant" position has declined from 29.1 per cent to 26.6 per cent; [fol. 252] is that right?

A. Between 1958 and 1960 it has declined, yes.

Q. A little bit more drastically than appears on your chart?

A. I didn't change anything about what happened in 1960 on my chart.

Q. I say the figures that I used showed a more substantial decline than your chart shows since the merger?

A. I don't see that we can compare what my chart shows with your chart.

[fol. 253] The Court: If you use 1960 the decline is more. The Witness: Yes.

The Court: There is nothing to it. You can see it right away.

Q. It is a trend going down; isn't it?

A. Whether or not it is a trend is a question that I wouldn't be prepared to answer without an analysis of the sort I haven't gotten into. I would say I did not pick the figures with a view of leaving out in order to mislead. If I had wanted to do that, I would have left out 1955 when it was 38.1 and started with '56 when it was 26.5, and then shown it had gone up from 26.5 to 28.5 in 1959. I was not trying to do that. I was just taking a reasonable period.

The Court: Nobody is claiming that you were trying to do that.

Mr. Bergson: That is exactly what I was going to say, Your Honor. I hope that you don't feel I am trying to cast any aspersions on what you have done at all.

I would like to have marked as Defendant's Exhibit AR-2 for identification a chart marked "Shipments of A.C.S.R. and aluminum cable bare by primary producers or affili-

ates including merged companies and other producers, 1954 [fol. 254] to 1960."

(Chart marked as Defendant's Exhibit AR-2 for identification.)

- Q. Now let's go back to your chart 2, Dr. Martin, which is Government Exhibit 435. And I show you Defendant's Exhibit AR-2 for identification, which is a chart dealing with the same products.
  - A. Yes.
  - Q. Now this chart has been submitted to Government counsel and they have not posed any objection to the accuracy of the Universe figures or the accuracy of the figures of ALCOA or Rome. Now looking at the year 1954 on that chart, what percentage of the market did ALCOA have?
    - A. 48.4.
    - Q. And what percentage did Rome have?.
    - A. .2.
    - Q. And going to 1960 what percentage did ALCOA have?
    - A. 30.6%.
    - Q. And Rome?
    - A. One-tenth of one percent.
    - Q. So the total is 30.7% for ALCOA and Rome!
    - A. Yes.
  - Q. And, therefore, if you had used the period from 1954 [fol. 255] to 1960 you would have shown a decline in ALCOA and Rome's position from 48.6% to 30.7%; is that right?
    - Q. That's right.
  - A. And from 1932—I beg your pardon, 1958—I was looking at percentages—1958, the last year before the merger, a decline from 32.8% to 30.7%; is that right?

A. Yes.

Mr. Bergson: Another indication of ALCOA's "Dominance" in this field.

Would you mark as Defendant's Exhibit AR-3 for identification a chart entitled "Shipment of aluminum insulated or covered wire and cable by primary producers or affiliates including merged companies and other producers, 1954 to 1960?"

(Chart marked as Defendant's Exhibit AR-3 for identification.)

Q. I show you Defendant's Exhibit AR-3 for identification, which corresponds to your chart No. 3, which is Government Exhibit 436. I ask you what percentage that shows for the year 1954 for ALCOA?

A. 10.0.

Q. And for Rome?

A. 6.9. 0

[fol. 256] Q. Which is lower than the figure with which you started in 1955.

A. Yes, lower.

Q. Lower for ALCOA and the same for Rome.

A. Just the opposite from the situation I previously stated.

Q. In 1960 what does it show?

A. It shows ALCOA 10.6; Rome 4.2.

Q. So that is a decline from 1954 to 1960 from 16.9 to 14.8.

A. Let's see. For ALCOA it increased from 10 to 10.6 and for Rome it went down from 6.9 to 4.2. You add them together, you get a slight decrease, yes. The decrease would be greater if you started with '55 as I did.

Q. Right.

A. And if I were trying to show deliberately something, I would have used '54.

The Court: Witness, don't get the impression—I don't get it—that is not what he is driving at at all, I don't think.

Mr. Bergson: No, I am not trying to discredit Dr. Martin at all. I have a very high regard for him. He has provided me with some very interesting reading, as a matter of [fol. 257] fact.

Q. Now from 1958, the year before the merger, to 1960, two years after the merger, the ALCOA-Rome share declined from 16.3 to 14.8; is that right?

A. Yes.

The Court: Starting a new subject?

Mr. Bergson: Yes.

The Court: All right. Take a short recess.

Mr. Bergson: I am sorry to be so slow, but it is hard to handle all these charts.

The Court: That is all right.

(Whereupon, a recess was taken after which the Trial was resumed.)

[fol. 258] Q. Dr. Martin, would you please look at Government Exhibit 434, which is your Chart No. 1, I think. I notice on this chart you have set out the figures for the Okonite Company, which in 1959 represented one-tenth of one percent of the market, and I also notice that in your footnotes you refer to Circle Wire and Cable, Continental Wire and Cable—no, I guess it is not Continental Wire and Cable, Continental Copper and Steel Industries and the General Electric Company. Now you state that Circle Wire and Cable had three-tenths of a percent; Continental had one-tenth of a percent and G.E. had four-tenths of a percent in 1959; I wondered why you didn't include those on the face of the chart.

A. These firms were included in the general statement in the footnote that says that companies were required to report only if they shipped more than 10,000 pounds a month, which meant that if a firm produced less than 10,000 pounds a month it didn't have to report. We found in our letters from the companies when we wrote to them, all the companies that were in the list supplied by defendants in interrogatory answers as being in the business, that these companies had not reported. I put the information in on Okonite, it reported. I used as my criterion as to whether I put it on the face of the table whether it had produced over 120,000 pounds in any one year. Now, [fol. 259] Okonite had not done so in 1958 but it had in 1959, and the percentage differed for different years, but primarily I was trying to get on the face of the table what seemed to me the important information, but for completeness to be sure all the information was there someplace. I put some of these minor amounts in the footnotes.

Q. Wouldn't it have been a more graphic portrayal of what the industry situation was if you put these companies which in 1959 had more than Okonite, had more than Roebling, more than Western Electric which had 0.0 on the chart?

A. Mr. Bergson, what may be true for 1959 may not be true for 1955 or 1956 or other years. I made my decisions on these things with respect to the whole chart, as to whether it would be more graphic I am not sure but what it might have been more confusing. I tried to simplify and to make it as clear as I could make it of the structure of the market with everything I had being put in—

Q. Well, don't-

A. -one place or another.

Q. These three companies alone represented eight-tenths of a percent of the market, don't you consider that an

important percentage?

- A. Well, I made the statement in the footnote that I had [fol. 260] considered them, I made the statement that the addition of these companies would change it no more than two-tenths of one percent. To put all of this in would have cluttered it up without adding anything significant.
- Q. So it would have cluttered up the chart to put in the figure?

A. It wouldn't have been more graphic.

Q. It would have cluttered it up to put in two-tenths of one percent, but it wouldn't clutter it up to put in that the company was acquired by Kennecott.

A. It produced five-tenths of one percent in 1956.

Q. You put in a company like John A. Roebling which produced 0.0 percent in 1958, and 0.1 percent in 1959 and produced nothing in the years before that, you stuck that on the face of the chart, was that for the purpose of having a footnote on that so you could say they were acquired by Reynolds?

A. No, it was because first it report to BDSA, and secondly, it had shipments greater than 120,000 pounds in 1959, which was one of the years—

Q. One-tenth of one percent in 1959, Circle had three-tenths of one percent, G.E. had four-tenths, and they are not on.

A. That's right, they do not report to BDSA.

Q. In this case we are not trying to determine whether [fol. 261] people reported to BDSA, we are trying to set up what the industry structure is. The Government contends this is a line of commerce. You have omitted from this chart three companies producing eight-tenths of a percent of business, more than some of the companies you have on the chart, and more in some instances than the

Government claims is illegal so far as the acquisition of Rome is concerned. I don't understand that.

A. It seems to me, sir, that we are dealing here with a question of how much of it should go on the face of the chart or on the footnotes, not what has gone into it or what has been left out. I put some of it in the footnotes and some of it on the face.

Q. Why didn't you leave Roebling out?

A. Roebling reported and G.E. didn't. To a statistician

Q. When you put Roebling in you had to use a footnote.

A. I think I would have had to use a footnote to report that they did not report to BDSA, and they are not included in the total. I couldn't figure out any way to do this without a lot of footnotes and explanations.

Q. You had a lot of footnotes and explanations anyway, you have a whole page of them here.

A. That's right, they are there because I insisted on [fol. 262] completeness and honesty in everything I put in. It would be nice not to worry about footnotes, but—

Q. Wouldn't it have been just as easy instead of having this great big footnote on page 2 to have put Circle in and G.E. and say these companies didn't report to BDSA?

A. I would agree this is an alternative way of drawing up such a chart. I gave consideration to it. I had a number of alternative ways to draw it up. I picked one and this is it. All of them gave the same information.

Q. I suggest, Mr. Martin, this chart as it is constituted, because it leaves out certain companies, Circle with three-tenths of one percent and Continental with one-tenth of one percent and G.E. with four-tenths of one percent and puts in Roebling with 0.1 percent in 1959 and Western Electric with 0.0 percent in 1959, and Okonite 0.1 percent in 1959 does not present an accurate picture of this industry.

Now, we are talking here in this case, as you well know, Dr. Martin, in terms of minute percentages in the Government's line of commerce called ACSR and aluminum cable, bare, the percentage of the market that substantially lessens competition according to the Government was three-tenths of one percent, and yet you don't think it is important

[fol. 263] enough to put on the face of the chart eighttenths of one percent.

Mr. Melchior: May I make a remark? I don't think that is the Government's contention at all. The Government is urging that as a result of this merger there may result a substantial lessening of competition, and this indicates market share, it doesn't indicate one point six percent of the competition is substantial, that is not the conclusion to draw from that chart.

Mr. Bergson: It is not the Government's position that the acquisition by Alcoa of Rome in your line of commerce, ACSR and aluminum cable, bare, by acquiring three-tenths of one percent will substantially—

Mr. Melchior: We think the merger will result in that

standard.

oMr. Bergson: You don't intend to rely on that particular percentage?

Mr. Melchior: I think we stated the Government's position both orally and by brief.

Mr. Bergson: And both ways.

The Court: Well, about all that I see to it is that I think if these three companies were included on the chart it [fol. 264] would perhaps be more complete, give a better overall picture.

Would you say that I am right about that or am I wrong? The Witness: Well, I would say it would be incomplete if I didn't have that information there. The chart consists of the page and the footnote. I hope the footnotes are read along with the chart, because if you read what is in the chart alone you wouldn't get the complete picture on almost any of them.

The Court: Judges are inclined to look at something that is easily readable, and they overlook the small print in the footnotes. I mistrust that is what they do.

The Witness: I would agree that it would have been nice to have had everything laid out simply, but I didn't find any way, and I studied it over for a long time as to the best way to put this together.

The Court: Let me ask you this, would the addition of those three companies, for instance, I think it is three, on the face of the exhibit change the percentage or your conclusion, the conclusion you seek to have the Court draw from [fol. 265] this exhibit?

The Witness: I don't think it would change the conclusion that would be drawn from the exhibit unless that conclusion were to hang on a very slight change, and I have indicated the leeway there, in the worst year, that is, the year where the change would be the biggest, it would be I believe I have said that in the footnote no more than two-tenths of one percentage point. This would be the maximum, and it would occur in the year with the smallest industry total for the firm with the largest figure. There you would get something under two-tenths of a percent change. In between it would have an effect that would be completely lost in the rounding of the numbers, but at the same time I wanted for completeness to put in the footnote so there would be no question that all the information was there.

#### By Mr. Bergson:

Q. Were you primarily interested in the statistics here?

A. Yes, my problem was to prepare statistical tabulations to present a mass of information in as concise a way as I could.

[fol. 266] Q. What has it got to do with the statistics that Okonite was acquired by Kennecott?

A. Well, the statistics have to be tied to particular firms or categories and in identifying and labeling these firms I have to have a separate firm for Reynolds, a separate category for Roebling, and I think it is relevant to point out that though they were one company after a certain date that they were separated for the period when the figures were given. That is the sort of thing I am trying to show. If someone reads this and knows that Reynolds and Roebling are merged and are one company, they might know that was not the case when I showed them as two separate companies.

Q. I asked you about Okonite.

A. I am sorry.

Q. Who on the face of this chart did Okonite merge with?

A. Well, let's see, Okonite-

Q. On the face of the chart.

A. I have to read my footnote.

Q. No, no, you just said you wanted the statistics to be understandable and you put the footnote in to tell that one was a successor company and the companies that appear on the chart were merged. I asked why did you put the footnote in for Okonite, there is no relation, Okonite has [fol. 267] no relation to any other company that appears on the face of this chart.

A. An alternate way might have been to put two lines, one for Okonite and then give the figures for 1955, 1956 and 1957 and then nothing thereafter, and another line for Kennecott and then the figures for 1958 and '59. I might have done it that way. Someone might say Kennecott has produced some wire and cable, Okonite Division, I don't have Kennecott on there. I wanted to show Kennecott and through its subsidiary Okonite in 1959 it is indicated here under the line "Okonite."

[fol. 268] Q. And this wasn't done for the purpose of getting a little testimony in on the chart?

A. I would say that my purpose was to be very careful to match up all the numbers with the right firms, identify them properly and completely.

Q. Let me ask you, did you consult with Counsel for the Government in the way this chart should be set up?

A. Yes, I think I did. I did discuss with them what my functions were to be as a consultant to them and that I was to be working on in the process. I talked about the material that was available and what they would like their statistician to prepare and put into evidence.

Q. Now in your Chart-it runs to 1959, doesn't it?

A. Yes.

Q. Do you know when Reynolds acquired Robling?

A. I am sure I have it in my footnote. March, 1961.

Q. Why did you have that footnote, then?

A. I think for the same reason that I had-

Q. This chart ends in 1959. You said a little while ago that you were trying to show the picture as it existed in each year. Now, in 1959 Reynolds and Roebling were as far apart as you and I were.

A. There was in my mind some confusion as to whom to attribute the production of labeling. During my effort to [fol. 269] get it set forth properly I found that this was

not an independent company. It was a subsidiary of Colorado Fuel and Iron Corporation from 1952 up until March, 1961, at which time the plants in question were transferred over. I put the information in—

Q. What has that got to do with the price of beans?

A. I suppose my chart may be over complete.

Q. Over something.

- A. I always tried to guard against it being incomplete. I looked into the question of who the firms were to get the proper corporate names, to get the proper corporation connections puts them into footnotes so that in some cases it might have been less relevant. I did it in all cases. I think it was clearly necessary to talk about the Kaiser-Bristol acquisition, to explain the meaning and purpose. Then perhaps I could have left out any mention of them.
  - Q. I have not asked about the Kaiser-Bristol one.
- A. You asked me about my policy with respect to labeling acquisitions.
- Q. I can understand your policy as far as the Kaiser and Bristol are concerned. I can understand your policy so far as Southern and Olin Mathison, but I can't understand it on the others. And I suggest that the reason was that you [fol. 270] wanted to testify about these mergers in this chart.
- A. My policy was to show all the information I had about corporate interconnections including the sale or purchase of plants which were involved in my figure.
- Q. And in your desire to testify, we were not deterred by the insignificance of the percentages even though the percentages were smaller than the percentages of companies that you left off the face of the chart?
- A. I have a very simple criteria by what I made of these decisions, as to what went into the face of the chart. I certainly will admit it would have been perfectly legitimate to leave out some I put in and put in some I left out.
- Q. In this aluminum conductor lines of commerce that we are talking about in this case, except for the line of commerce that the Government has designated insulated and covered, we are dealing with infinitesimal percentages, and yet percentages that are more substantial than percentages that are involved in this acquisition are ignored. I don't

understand it, and I must say that I don't think you explained it to my satisfaction.

A. Well, sir if by ignored you mean put in footnote [fol. 271] instead of on the face of the chart, I would have to say yes. But they are not ignored in the sense of being not considered and left out altogether.

Q. Well, let's go on. Let's go to Chart 3. That is the next one that has footnotes. We will skip 2, because that doesn't have any footnotes. Oh, I beg your pardon, I would like to go back to 1, which is Government's Exhibit 434 for just a moment.

I would like to invite your attention to the figures for Southern Electrical Company for the years 1955 and 1956, and then for the years '57, '58 and '59, which is the period after their acquisition by Olin?

A. Yes, sir.

[fol. 272] Q. Do you feel or is it your view—let me strike that. Does this not show that Southern Electrical Company's share as an independent prior to its acquisition had diminished when it became part of an integrated company?

A. Well, I don't think I have ever asked myself that question, but looking at it I can see that the share of Olin-Mathison, 1957, '58 and '59, in all three years is less than Southern Electrical in '55 and '56, yes.

Q. And in '56 is it so that Southern Electrical as an independent had 8.1 and in '59 when it acquired the power of integration it had 5.0?

A. It had 5.0 in 1959, yes. 5.6 in '57. It fluctuated up and down and back up again.

Q. All right, now let's go to the footnote of Exhibit, Government Exhibit 436, which is your Chart No. 3. Strike this. I am trying to hurry and I am missing stuff.

The Court: Take your time.

Q. I would like to go back to Chart No. 2. "Shipments of ACSR and aluminum cable bare."

The Court: That is Exhibit 435.

Mr. Bergson: Exhibit 435. I beg your pardon.

Q. And I would like to invite your attention to the amount of business that Bristol was doing at the time it

[fol. 273] was acquired by Kaiser, put in your chart in 1956 at 0.0 percent of the market; is that right?

A. Yes.

Q. And it sold 91,000 pounds of ACSR and aluminum cable bare. And in 1955 it had 0.1 percent and sold 83,000 pounds of aluminum cable bare. This is one of the acquisitions that the Government referred to as a source of acquisition in the history of this industry that leads to concentration; is it not?

A. I am not sure about what the Government referred

to. Where do you mean?

Q. Have you read the Government's brief?

A. Yes, I read the Government's brief.

Q. Didn't they refer to this acquisition?

A. I don't recall it in that much detail.

Q. Look now at the acquisition by Olin-Mathison Corporation of Southern Electrical Corporation. According to your chart at the time of acquisition Olin-Mathison wasn't even in the aluminum cable or ACSR line of commerce; is that right!

A. That's right.

Q. Now this acquisition took place in 1958, didn't it, the acquisition of Rome by ALCOA?

A. No.

Q-'59, I beg your pardon.

[fol. 274] A. '59.

Q. I notice here that in 1958 South Wire had 2.3 percent of the market. And in 1959 it had 5.0 percent of the market.

A. Yes, sir, that right.

Q. Does that suggest to you that in 1959 Southern Wirehad been hurt by this acquisition?

Mr. Melchior: I think that is an improper question.

The Court: No, overruled. I want as much understanding of these charts as I can get.

A. I am not sure what your question is talking about—South Wire.

Q. South Wire in 1958, the year before the acquisition, had 2.3 percent of the market. South Wire is one of the non-integrated companies, an unconcentrated company.

A. Yes.

Q. It in 1958 had 2.3 percent of the market; 1959, which

was the year of the Rome-ALCOA merger, which took place in 1959, it had 5 percent; is that right?

A. Its percentage was 5 percent in '59'.

Q. And Nehring Electric, which is one of the independents, is it not?

A. Yes.

[fol. 275] Q. And it in 1958 had 6 percent, and in 1959 it had 2.2 percent; right?

A. Yes, it had 2.6 in '57 and dropped down in '58 and

back up in '59,

Q. We are talking about since the period immediately before and immediately after the Rome acquisition. Certainly the Rome acquisition couldn't have anything to do with this dropping from 2.6 in '57 to 0.6 in '58?

A. Likewise it may have had nothing to do with its going

up afterwards.

Q. I am not sure it did.

Mr. Bergson: Your Honor, I think that concludes my examination on Government's Exhibit 435. I have an awful lot more of this witness. Would you care to suspend for lunch now?

The Court: Well, I guess, yes. I guess I held you pretty tight yesterday. You don't need this on the record, Mr. Jordan.

(Discussion off the record.)

The Court: I guess I had better let you go until two o'clock.

The Clerk: Court is in recess until two o'clock.

(Whereupon at 12:35 p.m. an adjournment was taken until two o'clock p.m. of the same day.)

[fol. 276] AFTERNOON SESSION

APPEARANNCES: Same as Morning.

The Court: All right, gentlemen.

Mr. Melchior: May it please the Court, we have become a little concerned about some of our witnesses and the time schedule involved, and it occurs to me perhaps we could interrupt the examination of Dr. Martin so some of the witnesses who have been here for some time could go home,

and I have discussed it with defense counsel and they seem to be in agreement. So with your permission—

The Court: All right, we will suspend the Cross Exam-

ination of Dr. Martin.

A. Jackson Reeves, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

# By Mr. Wertheimer:

Q. Will you please state your full name and position

please?

A. Andrew Jackson Reeves. I am Chief of Civil En-[fol. 277] gineering Design Branch, Division of Power, Tennessee Valley Authority.

Q. How long have you been with the Tennessee Valley Authority, Mr. Reeves?

A. 28 years.

Q. What jobs have you held with the T.V.A. prior to

your present one?

A. Well, my first job with the Tennessee Valley Authority was Field Location Engineer. From that I was transferred to the Design Office in Transmission Design work. After that I was transferred to the General Engineering Office, and from that position I was elevated to Chief of the Branch.

Q. I see. What are the responsibilities of your present

position?

A. The responsibilities of the present job is the total responsibility of transmission design, transmission location, acquisition of material, developing construction specifications for all the transmission work under the Tennessee Valley Authority Program.

Q. About how many dollars worth of new construction

were you responsible for last year?

A. Last year's transmission design work covered about twenty-five million dollars.

[fol. 278] Q. Are you a professional engineer?

A. I am, registered with the State of Tennessee.

Q. Have you written in your field?

A. I have written some articles that appeared in the Trade Journals. The most recent article, I am co-author in the feature article of the Electrical World issue of January on the five-hundred thousand volt transmission-line.

Q. Mr. Reeves, could you generally describe the size of

the T.V.A. system?

A. Yes. The Tennessee Valley transmission system covers eighty thousand square miles. The generating capacity of the present system is about twelve million kilowatts with three and half million kilowatts under construction. The generating plants are connected with some twelve thousand miles of transmission line.

Q. Would you describe the area that the T.V.A. system

covers?

A. The T.V.A. system covers all of Tennessee, part of Kentucky, parts of Mississippi, part of Alabama, part of Georgia and part of North Carolina.

Q. How does the T.V.A. rank in comparison with electri-

cal power systems in the United States?

A. T.V.A. is probably the largest integrated power system.

[fol. 279] Q. On your transmission network, what is the range of voltages?

A. Our system is connected with three primary voltages, forty-six thousand volts, sixty-nine thousand and one-hundred sixty-one thousand. In certain instances transmission is made by thirteen thousand volt lines to large customers on short sections of line.

Q. Prior to World War II what conductors did T.V.A.

purchase for its transmission lines?

A. Prior to World War II T.V.A. purchased A.C.S.R. conductor exclusively for transmission lines.

Q. And A.C.S.R.-

A. (Interrupting) Aluminum—cable steel reinforced conductor.

Q. At that time were alternate bids solicited for copper and aluminum cable?

A. During the period from 1933 to World War II it was our policy to take alternate bids each time we were buying transmission cable.

[fol. 280] Q. What were the results of taking alternate bids?

A. Well, the results confirmed our position as to the economics of our design and the best cable to use, which in each instance proved to be ACSR without exception.

Q. What were the comparable costs of copper and alu-

minum at that time?

A. Well, in those days, or in 1936, the cost of copper conductor stranded into cable of say 400,000 circular mils would be about 13½ cents a pound. The equivalent ACSR cable would be 636,000 and it cost about 15½ cents a pound.

Q. In other words, the aluminum cable, the ACSR, was more expensive than the comparable copper cable, on a

comparable basis!

A. That's right.

Q. Why did you then use aluminum?

A. The differential in material even over the difference in cost was less. The equivalent copper conductor of the size referred to would be 50 percent heavier than the ACSR cable, and even on a cost ratio of  $13\frac{1}{2}$  cents for copper and  $15\frac{1}{2}$  cents for ACSR for an average line of 50 miles there was still probably fifty thousand dollars to be saved in material alone.

[fol. 281] Q. During World War II what were TVA's

buying practices?

A. Well, during the period of the emergency of the war we were restricted to products approved by the War Production Board and the material that we used for our construction was alloted by the Government from materials available.

Q. Then the choice was not an unfettered one?

A. That is exactly right. We were told what we could use and the amounts we could use.

Q. In the period since World War II what have been

TVA's procedure in regard to conductor?

A. Of course, in the intervening period the cost of copper and the cost of ACSR has changed, but it still proves economical to design and build transmission lines out of ACSR conductor.

Q. Since World War II have you scrapped any of your copper lines?

A. Yes. At one period in around '56 or '57 the cost of

scrap copper went up to approximately 46, 47 cents a pound. At that time we were able to remove some copper on transmission lines that we acquired from existing power facilities in the Valley; we increased the capacity of these lines at no additional cost to the Authority. In one instance we [fol. 282] removed a large copper conductor on a 15-mile section of line, put in aluminum conductor and made a quarter of a million dollars net.

Q. In general terms, Mr. Reeves, how much copper con-

ductor have you on your system now?

A. Well, our system is something over 12,000 miles, and the amount of copper conductor in the system would be in the range of 3 to 5 percent.

Q. I see. What are the reasons for your use of aluminum

conductor?

A. Well, as stated, first the cost of the bare material favors the ACSR for a foot of equivalent conductor. Also the cost of handling, hauling, favors the lighter conductor, being the ACSR. The design advantages of ACSR due to its high strength qualities permits me to use less structures per mile and that in turn is a real saving in transmission design and in turn the installed cost of the line.

Q. I wonder if you could give us an example of the savings both on the conductor and on the installed cost of the

completed line.

A. Well; as a typical representative line of 161,000 volts, single circuit construction, the cost per mile in that type line using an aluminum conductor of 795,000 ACSR would [fol. 283] be \$33,335. The equivalent copper conductor in that line of 500,000 copper would cost us \$39,228 per mile, or some \$6,000 more per mile for the same type line.

Q. In terms of percentages what would the difference be? A. Well, just the bare material or the conductor cost alone, there is some 10 percent greater cost of the conductor, but the installed cost of the line complete, ready for operation, there would be approximately 18 or 19 percent additional cost.

Q. In addition to the economic considerations which you just outlined, are there any additional reasons for using aluminum conductor?

A. Well, as stated before actually the weight has a bearing on cost, the handling of it, the shipping, the hauling, the

direction. It also has advantages in higher voltages as it has advantage in corona.

Q. Would you please define corona for us, Mr. Reeves?

A. Corona is the loss of electrical energy into the air and small cables under high voltage have larger loss of corona than the larger cables. The equivalent aluminum cable being larger in diameter thus has less loss due to corona.

[fol. 284] Q. Would you compare these conductors in

A. Well, in terms of corrosion ACSR naturally oxidizes as soon as it is made, and then it protects itself from further oxidation. Copper as a metal continues to corrode or

erode throughout its entire life.

terms of corrosion problems?

Q. How does this affect the electrical system?

A. Well, the effect could be from contamination, from some chemical plant or atmospheric conditions, which would hurt one and not harm the other. That is the primary effect.

Q. How does TVA buy its electrical conductor, Mr. Reeves?

A. Well, being a government agency

Mr. Adler: If he knows your Honor.

The Court: Yes.

Mr. Adler: This witness has not testified that he buys.

Mr. Wertheimer: I thought he said he was responsible for the design.

The Witness: I am also responsible for the acquisition

of the material.

Mr. Wertheimer: Will you repeat the question to Mr. Reeves.

(Last question read by the reporter.)

[fol. 284a] A. We determine our needs. We write field requisitions covering the amounts required. The requisitions are put on invitations to bid and sent to prospective bidders. The bids are returned to my office. We review the bids, determine the low bidder, make recommendation for award.

[fol. 285] Q. Can any company producing, let's say, ACSR, bid on a TVA job?

A. Our policy for conductors only permits those com-

panies to bid on conductor who have been inspected by our technical team and put on the acceptable list.

Q. Did Rome Cable Corporation prior to its acquisition

request such TVA approval.

A. Rome Cable called our materials branch requesting inspection of their facilities, at which time I was called and asked to mark my calendar to make a trip to Rome Cable plant.

Q. What would be the purpose of such a trip, Mr.

Reeves!

A. To inspect the facilities, to get acquainted with the personnel and to know about their quality control within the plant.

Q. In other words, to approve Rome as a bidder on ACSR?

A. That's right.

Q. What happened subsequent to this request?

.A. Well, within a couple of months I was called, this being about the first of 1959, was told to remove the tentative inspection of Rome Cable plant from my calendar, that it would not be made, that they were not interested in supplying or bidding on our ACSR requirements.

[fol. 286] Q. How many qualified bidders does TVA pres-

ently have for ACSR!

A. Six or eight, there is six or eight qualified bidders.

Q. Would TVA like more?

A. We encourage all qualified bidders to get our paper, invitations to bid, and submit bids.

Q. What has been TVA's experience in regard to the

prices received on ACSR invitations?

A. Our experience has not been too good for the fact that over the 25 or more years we have been purchasing aluminum cable the bids in most instances have been equal bidding.

Q. Have there been any deviations therefrom?

A. Minor deviations, particularly one company has been successful bidder time and time again just by the one-half per cent discount he offers with his bid. However, he would increase his price to a small amount above the published price, thus giving him the business with the one-half per cent discount.

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Q. Let me see if we can make that a little clearer. The price he bids is above the list price of others?

A. Slightly above.

Q. But with the one-half of one per cent discount it drops slightly below?

[fol. 287] A. Yes.

Q. By this means he has gotten TVA bids?

A. Considerable.

Q. What is the name of this corporation, Mr. Reeves?

A. Nehring Electrical Works.

Q. Why would TVA like more bidders in the field?

A. Well, naturally we believe in the more participation in the bidding the better chance it is for us to get competitive, real competitive bids and material at a cheaper price. We have found that so in all the other fields with the exception of one or two.

Mr. Wertheimer: Thank you sir. That's all.

# Cross-Camination.

# By Mr. Adler:

- Q. Mr. Reeves, your TVA transmission system about which you testified uses as you said ACSR, the cable product is ACSR?
  - A. Right.
  - Q. Is that bare?
  - A. Yes, overhead transmission construction is bare cable.
  - Q. Is any covered or insulated conductor used?
- A. Not in overhead transmission construction by the Tennessee Valley Authority.
- Q. So your testimony on the use of transmission cable [fol. 288] and the switch which occurred from copper to aluminum was related to bare ACSR cable.

Mr. Wertheimer: I don't believe Mr. Reeves testified to any switch.

The Court: Well, it is all the same thing. Go ahead.

The Witness: We have never switched from copper to aluminum cable. From the beginning of the authority, the conductor that we have bought of our own accord has been ACSR cable for overhead transmission construction.

# By Mr. Adler:

- Q. Now, when did you start using that?
- A. In 1933.
- Q. 1933?
- A. Yes, sir.
- Q. All right. The transmission cable which you use is the bare ACSR cable.
- A. Or all aluminum in some instances. It is still bare cable.
- Q. And the testimony which you gave regarding the reasons for your preference for such cable related entirely to bare overhead transmission cable?
- A. That is my responsibility, for transmission construction which uses only bare cable.
- [fol. 289] Q. You were not testifying at all about insulated or covered wire and cable products in your testimony?
- A. No, I am testifying bare aluminum or ACSR cable in overhead transmission construction.
- Q. Now, in 1933 when your system was established and you went to the use of ACSR bare cable in your transmission system, how many suppliers did you have of that product?
  - A. Only one.
- Q. Only one. And how many did you testify you have today?
  - A. Six or eight.
- Q. Had you in your position of responsibility with TVA and in the transmission cable field heard that Rome Cable was an important supplier of ACSR hare cable?
- A. No, I had not heard. I knew the company by name. I was told to prepare for an inspection of their plant.
- Q. Had TVA purchased other products, insulated or covered products from Rome Cable?
  - A. My office had not. It was not on the acceptable list.
- Q. And you had not heard that Rome was a supplier of ACSR bare cable?
- A: I had been told that they had requested inspection of the plant to be an acceptable supplier of our needs.
- [fol. 290] Mr. Adler: All right. Thank you. That's all.

Mr. Wertheimer: No further questions.

The Court: Just one question, Mr. Reeves. In prepar-

ing this acceptable list, do you wait for applications to come from the manufacturer or do you go out to broaden your source of supply to ascertain yourself those that may be acceptable?

The Witness: Your Honor, the normal procedure is the company sends their representative by our office. They are interested in our business. Then we tell them the sequence

of the conditions.

The Court: What I am getting at is that if you are short suppliers, or if you don't think you have a fair number of bidders, you could seek, if you wish, the larger number of suppliers that might go on your acceptable list, couldn't you?

The Witness: I believe we have followed the industry pretty close, we are acquainted with the potential suppliers. Their representatives call on us and in turn request inspec-

tion.

The Court: Yes, I understand all that, but mine is a [fol. 291] Tather simple question. You don't go out and seek to expand your source of suppliers?

The Witness: No, sir.

The Court: So that you wait for the manufacturer, for instance, to come to you to establish himself within that class that you term acceptable?

The Witness: Right, sir, it is a highly specialized field.

The Court: So your list of six or eight does not represent the number of acceptable suppliers of ACSR, the number that might be acceptable, I should say?

The Witness: The number that might be acceptable could

be greater.

The Court: All right.

(Witness excused.)

ROBERT LATANE WARE, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

### By Mr. Mahaffie:

Q. Mr. Ware, will you state your occupation, please?

A. I am employed by the Virginia Electric & Power [fol. 292] Company as manager of transmission and distribution.

- Q. Where is the Virginia Electric and Power located?
- A. The general office is located in Richmond, Virginia.
- Q. Thank you. What is your educational background?
  A. I was graduated from Virginia Polytechnic Institute with a B.S. degree in Electrical Engineering in 1926.
- Q. And what has been your engineering or business experience since then?

A. Sir, I started with the Virigina Electric and Power Company the day after graduation as a student engineer, and after serving as student engineer I worked in the relay department of the company in the system transmission department and in the system engineering department, and in May of 1931 I was transferred to Suffern, Virginia as superintendent of the Meter and Installation Department.

In 1933 I was made District Superintendent of that district, and in 1938 I was transferred to Norfolk, Virginia, as head of the engineering department of Norfolk District. I worked in Norfolk until March of 1942, when I was called

into the army.

I stayed in the army for four years as an officer in the army, and I guess my most important assignment was when [foll 293] I was given the mission of running the main line of communication for the Third Army commanded by the late General Patton.

After the war I returned to the States in March, 1946, and went to Norfolk, Virginia as Assistant District Super-intendent of the Norfolk District.

In 1947 I was transferred to the Potomac District of the company at Alexandria, Virginia, as assistant superintendent of the Potomac District and I stayed—

Q. (Interrupting) Where is that?

A. Alexandria. I stayed in Alexandria until September of 1954, when I was transferred to the Richmond general office to organize as system distribution department. In January of 1956 I was made manager of transmission and distribution for the Vîrginia Electric and Power Company, the position that I now hold.

Q. What other responsibilities of your present position, sir?

A. I am responsible for the proper maintenance and operation of the transmission and distribution department and also responsible to see that they are operated in an efficient manner.

[fol. 294] Q. Have you ever had the job of designing transmission or distribution lines?

A. Yes, sir. In Norfolk, Virginia. In charge of the engineering department there from '38 to '42 I was directly responsible for the design or distribution and what some companies call sub-transmission. Everything below 66,000 is considered as distribution.

Q. By the way, Mr. Ware, is that 66,000 volts the breaking point between transmission and distribution a standard breaking point throughout the country?

A. No, sir, it is not. Everything over 66,000 and above is transmission, and the voltage below that, which we have

in our system is classified as distribution.

Q. Now, Mr. Ware, what is generally the nature of the business of the Virginia Electric Power Company?

A. The Virginia Electric Power Company is an electric .

utility in business to sell electrical energy.

Q. Now I am going to ask you to state the size of the company, first, Mr. Ware, in terms of customers served.

A. Well, the figures I am going to give you will be figures as of December 31, 1960, which were included in our annual report for 1960. At this time house customers on December 31, 1960 was 761,700.

[fol. 295] Q. All right, sir. Now, if you have it as of the same date, what is the total system output of the Virginia Electric and Power Company?

A. Well, in 1960° our total output was 9,460,236 kilowatt.

Q. And once more sir, as of that date, and if you have it,

how many miles of electric lines did the utility have in operation?

A. As of that date we had 31,800 miles of electric line in operation.

Q. What is the approximate size of VEPCO in relation to other United States electrical utilities?

A. Well, we rank thirteenth or higher. The last time I heard the rating, we were thirteenth from the top.

Q. Mr. Ware, what kind of localities are served by your company!

A. Sir, we serve from Norfolk, Virginia, across the state of Virginia, Norfolk is along the seacoast and we served on up into the Alleghany Mountains to Clifton Falls into North Roanoke, West Virginia. We serve communities of

many types.
Q. I believe you said Norfolk?

A. We serve Norfolk, Hamden, North Richmond, Charlottesville, Virginia and any number of small towns.

[fol. 296] Q. Do you serve rural areas?

A. We serve 68 counties in Virginia and a good part of that consists of rural areas. We also serve a part of eastern North Carolina and a part of West Virginia.

Q. I see.

A. I can give you the number of counties if you want.

Q. I don't think it is necessary, sir. Would you describe generally, Mr. Ware, the transmission and distribution system of the Virginia Electric Power Company?

A. Yes. The transmission system extends from down in Elizabeth City in North Carolina to Norfolk, Virginia, Hamden, Virginia, Richmond, Virginia, back down to Charlottesville and then to Clifton Falls and Hamden, West Virginia.

Q. What is the purpose of the transmission system? What does it do?

A. The transmission system is to handle or transfer large blocks of electrical energy from points of generation to points of distribution.

Q. What is the purpose or function of the distribution system?

A. The distribution system is to get the energy from the points of distribution that I spoke of to the customer, ultimately to the customer.

[fol. 297] Q. Does the company use both overhead and underground lines in its transmission and distribution?

A. In transmission and distribution it uses both overhead and underground, but we have no underground lines in transmission.

Q. You do have them in distribution?

A. Yes, we do ..

Q. Why do you use underground lines? Where do you

use underground lines?

A. The underground lines on our system are used mainly in downtown areas of cities such as Norfolk, Virginia, Richmond, Virginia, Alexandria, Virginia and some in Arlington, Virginia.

Q. Mr. Ware, would you state the different general types of electrical conductors that are used by VEPCO in its distribution system?

A. We use bare conductor. We use covered conductor

and we use insulated cable.

Q. How does bare conductor fit into the system? What is it used for?

A. Bare conductor is used 100 percent on transmission. All of our transmission is bare conductor. That is 66,000, 110,000 and 235,000 volt lines.

Q. And is it also used in distribution?

[fol. 298] A. It is used in distribution also, yes, sir.

Q. What about covered conductor?

A. Covered conductor is used only in distribution and is used on the primary lines only where it is required by city ordinance or where we have special tree conditions or such as that on primary lines. It is used quite extensively on secondary lines.

Q. Would you state the difference between a primary-

distribution line and a secondary distribution?

A. On our distribution system we have a number of high voltage primary lines. We have lines of 44,000 volts; 34,500 volts; 22,000 volts, but the most part of that distribution which gets energy out to the customer is either 7,212,-470; 7,620,132.

Q. I am not sure the Court understand nor I understand those last two terms that you used.

A. All right, sir.

Q. Now, the last two voltages that you described are secondary distribution voltage?

A. No, they are not secondary distribution voltages; no,

sir.

Q. They are primary distribution voltages?

A. They are primary distribution voltages that run from our distribution substations out. Out to where our cus[fol. 299] tomer is located, at the location of the customer where we will have a step-down distribution transformer that will step the voltage to the utilization voltage of the customer.

Q. And that is secondary?

A. That is what we call secondary.

Q. Where does VEPCO use insulated cable in its system?

A. Well, it uses insulated cable in its underground system.

Q. Does the company use a product known as a service drop cable?

A. Yes, sir.

Q. And where does that fit into the system?

A. Well, sir, the way we install these transformers at the location or adjacent to where the customer is, we step from what I call a primary distribution voltage down to utilization voltage and that is where we run secondaries. So we run from the secondaries to the residences or places of business, if it is a small business, with a triplex cable.

Q. Would it be correct to say, sir, that is the line which

runs from the pole outside my house to my house?

A. To the point of attachment on your house, yes, sir. [fol. 300] Q. What conductor metals are used by the company, sir?

A. I am sorry?

Q. What conductor metals are used by the Virginia Electric Power Company?

A. Conductor metals?

Q. Yes, sir.

A. We use both copper and aluminum.

Q. Now, since you have been with the Virginia Electric Power Company, I believe you said since 1926?

A. That's right, except for four years in the Army.

Q. In that time has there been any change in the relative

use of copper and aluminum in overhead transmission and distribution?

A. Yes, sir.

· Q. Would you describe the change or changes and when

they took place?

- A. The first transmission line that I know of on that property that was built using ACSR was started in 1928. It extended from Long Rapids in North Carolina to a point between Long Rapids and Hendersonville. That was 336,-400 ACSR.
- Q. When you say 336,400 ACSR, what term of measurement is that?

[fol. 301] A. That is in circular mils.

Q. And is that a standard measurement of each conductor?

A. Yes, sir.

Q. Thank you, sir, proceed. Go ahead.

A. Well, then from that time on we had a gradual trend from copper to ACSR conductor on our transmission lines. At the present time our transmission system is being constructed of aluminum ACSR just about 100 percent, and the reason I say that, sometimes where we take down some copper and we have to make a short extension, we use copper taken down from other circuits. But other than that we are 100 percent ACSR at this time.

Q. Are you talking now of transmission, sir?

A. Yes, transmission lines.

Q. What about distribution lines?

A. Distribution. Back in the early thirties when we started with an extensive rural program, we tried several different types of conductors. Up to that time we had used copper. We tried copper-weld-copper, we also experimented with—

Q. What is copper-weld-copper, Mr. Ware?

A. Well, it is a steel conductor coated with copper and it may be used with bare copper conductors.

[fol. 302] Q. Thank you, sir. Now you were describing

the change in distribution.

A. Well, it was not too long after we started this extensive rural program before we were using ACSR conductor on it 100 percent in rural areas, and we continued that way until 1948, is when we started to use ACSR and straight aluminum conductor in that area, and on our secondary networks, that is on the secondaries, and residential areas and in towns.

Q. You say you started using aluminum in 1948?

A. 1948.

Q. Was any significant change made thereafter?

A. Well; sir, it took approximately a year and a half, two years to change from the use of copper to aluminum, and the reason I say that it took a while for us to put all of our crews and men doing the work with tools suitable for use with aluminum. And we also had a program of training our people to know how to put aluminum up so it wouldn't give trouble. So it did take two years or a little over to get into 100 percent use of aluminum. And by 100 percent, I say this is in the areas that we use aluminum transmission, rural distribution and on secondary systems. But I do want to clarify one thing that I said.

[fol. 303] Q. Yes, sir.

A. We do not use aluminum everywhere on our system.

Q. Now in what areas do you not use aluminum, sir?

A. We have some areas along the seacoast down around Norfolk, Virginia, Hampton, Virginia and along the coast of North Carolina where we tried to use ACSR conductor that we were not successful, so we then had to continue with copper.

Q. Are these the areas defined as-

A. Yes, sir.

Q. -seacoast areas?

A. Yes, sir.

Q. And within those areas do you use any aluminum at all?

A. No. The policy of the company, which is the stated policy, is that no aluminum will be used in those areas.

Q. In these areas what kind of conductor do you use?

A. We have to use copper.

Q. Do you have any maps which will show these areas?

A. Yes, sir. Here is one showing the area of Norfolk, Virginia and the section that we use copper in.

Q. Would you produce the others?

A. Here is one showing a section of Carolina and there [fol. 304] is one showing a section of Hampton.

Mr. Mahaffie: I am going to ask that this be marked as Government's Exhibit for identification. Mr. Reporter, would you mark these documents as 469, 470 and 471 for identification, please.

(Three maps marked as Government's Exhibits 469, 470 and 471 for identification.)

Q. Now, Mr. Ware, these documents have been marked as Government's Exhibits 469, 470 and 471 for identification.

. Mr. Mahaffie: Your Honor, I would like to hold these up, if I may. This need not be on the record.

(Discussion off the record.)

#### By Mr. Mahaffie:

Q. Mr. Ware, I am going to show you, I am going to unfold and show you Government Exhibit 469 for identification and ask you to describe it and explain it, if you would, sir. Excuse me, Mr. Ware—strike that. Mr. Ware, was this, who prepared this map, sir?

A. That map was prepared by the head of the engineering department in Norfolk, Virginia. I requested him to send me a map showing exactly where we still use ½ copper

[fol. 305] line.

Q. And does this gentleman work under your supervision?

A. Indirectly. He works in the Norfolk Division as manager of transmission and distribution. The head of the distribution, of that department, comes under me.

Q. Does this map correctly reflect the area of your system within which as you have described you only use copper

conductor 1

A. Adjacent to Norfolk, Virginia.

Q. And do the lines on this map correctly reflect that so-called copper area of your system?

A. Yes, sir. :

[fol. 306] Now Mr. Ware, are those facts also true of the other two maps that we have out here?

A. They are, sir.

Mr. Mahaffie: Well, Your Honor, at this time I would like to offer Government Exhibit 469, 470 and 471 for identification into evidence.

The Court: Why don't you open up 470 and 471 so we can see what it is.

Mr. Adler: You are offering them in evidence?

Mr. Mahaffie: Yes, I am.

Mr. Adler: Could we just take a look at them?

Mr. Mahaffie: Sure.

(Documents shown to counsel)

Mr. Adler: No objection.

The Court: All right, I will receive them.

(Government Exhibits 469, 470 and 471 marked for identification received in evidence.)

The Court: On this last one, 471, is that area also marked in red? It is a smaller area there, is that it?

Mr. Mahaffie: It is outlined in red, Your Honor, the [fol. 307] actual color is closer to a salmon color.

The Witness: I guess it is.

The Court: All right. I will receive them. I guess I can understand them.

Mr. Mahaffie: Now, Mr. Ware does the Court desire an explanation on these?

The Court: I think they are pretty plain. I don't think you need much explanation. The parts that are in red are the parts in which copper is used exclusively, is that right?

The Witness: Right, sir.

#### By Mr. Mahaffie:

Q. Mr. Ware, the Exhibits—well, I will strike that out. The Exhibits show what they cover on their face. Mr. Ware, in what other circumstances, that is, in circumstances other than the sea coast areas we have just discussed, would the Virginia Electric Power Company use a copper conductor overhead?

A. You say would we?

Q. Let me rephrase that, would the Virginia Electric Power Company use a copper conductor in overhead transmission and distribution in any areas of its system other than those areas outlined in red on these maps! [fol. 308] A. Let me ask you a question. You say would

it use, and we would not use unless we had some industry

would move in there that had some contamination that they would find aluminum wouldn't stand up, then we would probably try copper. But I know of no place that we need copper other than along the sea coast, if that answers your question.

Q. Yes, sir, that is fine. What conductor metal does the

company use in its underground cables?

A. It uses copper a hundred percent on underground.

Q. Why is this?

A. Well, on the underground systems, as I said, in downtown Norfolk and downtown Richmond and Alexandria and Arlington, we would be faced with a lot of problems if we tried to make extensions off those copper systems with aluminum. It would mean that we would have to have tools different from the ones we now have; we would have to train our personnel and all and I don't think at this time we could consider using aluminum.

Q. Are there any differences, significant differences in training and experience required for crews working with aluminum as opposed to crews working with copper?

A. Yes, we think crews have to be better trained to work with aluminum. Aluminum is softer, is easily damaged and [fol. 309] all, so we have had to pay more attention to the training of those crews.

Now aluminum is a metal that oxidizes very fast, so we have to make sure that the metal is clean and that the connector is coated with no oxide, what most people call it, and it is used immediately so it won't oxidize and tend to make a poor connection.

Q. Do you use the same connectors for aluminum as you

do for copper!

A. No, sir, we do not use the same connectors, we have gone to where we use aluminum to more or less a hundred percent compression connectors. We also use compression connectors on copper, but they are not of the same metal.

Q. Not the same product?

A. No.

Q. Mr. Ware, is the purchase of conductors by the Virginia Electric Power Company governed by any internal rules of the company?

A. Yes, sir.

Mr. Adler: May I have that question again!

(Reporter read back the last question as above recorded)

Mr. Adler: Your Honor, this witness has not been quali-[fol. 310] fied I don't believe to testify on rules for purchasing. He is Manager of Transmission and Distribution, which I understand is an operating rather than a purchasing responsibility.

Mr. Mahaffie: Well, I will ask a different question to meet

the objection.

#### Mr. Mahaffie:

Q. Mr. Ware, have you in connection with your work participated in the drafting or promulgation of any internal recommendations of the Virginia Electric Power Company which govern the purchase of conductors by the company?

A. Well, sir, no equipment or material is purchased by our company unless it is approved by what is known as the Standards Committee, and as head of the Transmission and Distribution Department I have representatives on that Committee. So the Purchasing Department has to purchase in accordance with our standards, and our standards call for aluminum to be used in the areas other than those shown as shaded on these maps, and in those areas we use copper.

Q. And does the Purchasing Agent have any discretion

under these rules?

[fol. 311] A. You mean can he swap one metal for the other?

Q. Yes.

A. No, he cannot.

Q. Mr. Ware, what are the factors which cause the Virginia Electric Power Company to use aluminum instead of copper in overhead applications?

A. Well, we use aluminum instead of copper in overhead

applications mainly from an economical standpoint.

Q. And what facts make it more economical for the com-

pany to use aluminum instead of copper?

A. Well, aluminum is lighter, it is stronger, and, of course, we have to take into consideration its conductivity and the price that we pay for it.

Q. Now can you give an example of how these factors work out in actual practice, that is, how the price of

aluminum and copper conductors plus the weight difference, plus the conductivity difference works out in actual practice, that is, in final cost of conductors?

A. I think we would have to use conductors that had equivalent current carrying capacities in order to compare one metal with another. Now the Friday before I left down in Virginia on Monday, I checked with our Purchasing Department to see if they had purchased any copper this year, and I found out that they had purchased some No. 4 [fol. 312] bare solid copper in January. So I inquired as to what we paid for it, and they said it was 37.85 cents per pound. Now that conductor weighs 126 and four-tenths pounds per thousand feet, which means that a thousand feet of the conductor costs approximately \$47.84. Now the equivalent current carrying capacity of A.C.S.R. would be No. 2 A.C.S.R. That weighs 91 and six-tenths pounds per thousand feet. It costs 29.34 cents per pound, \$26.87 for a thousand feet. That means that the copper would cost us 178 percent of what the aluminum cost us to do the same job.

- Q. That is, to achieve equivalent current carrying capacity.
  - A. That's right.
- Q. Thank you, sir. Mr. Ware, is the Virginia Electric Power Company planning any particularly significant new developments in transmission or distribution?
- A. Yes, sir, we have had a very large construction program for several years. In 1961 I believe our appropriation was 85 million dollars, and they have a project which is already on the way to build a mine mouth plant, a plant up in the coal fields of West Virginia, near Petersburg, West Virginia, and from that plant we plan to build a five hundred thousand volt line down to Northern Virginia, that is, [fol. 313] adjacent to Fairfax and Alexandria, and we plan to complete a loop down to Richmond, Virginia and back around down by Staunton and down into the line where it comes in.
  - Q. This line is to operate at a half a million volts?
  - A. Yes, sir, five-hundred thousand, a half a million volts.
- Q. Do any other utilities in the country have some lines operating at that voltage?

A. They have some experimental lines, I think, at T.V.A., I think they have an experimental line.

Q. This line is not to be experimental.

A. No, sir.

Q. What kind of conductor metal is going to be used on that line?

A. The exact size, etc. has not been decided, but in discussing it with the Manager of the Systems Engineering Department last Friday I was assured it would be A.C.S.R.

Mr. Mahaffie: Thank you, Mr. Ware.

That's all.

Mr. Adler: No questions.

(Witness excused)

[fol. 314] WILLIAM R. JOHNSON, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

# By Mr. Melchior: .

Q. Would you state your full name and the name of your employer?

A. I am William R. Johnson, employed by the Pacific

Gas & Electric Company.

Q. What is the title of your position, Mr. Johnson?

A. Chief, Electric Generation and Transmission Engineer.

Q. How long have you occupied such position?

A. Since 1951.

Q. What position did you hold prior thereto?

A. I was Assistant to the Chief.

Q. Mr. Johnson, would you state what your educational background is?

A. I received the B.S. Degree in Electrical Engineering from Georgia Tech in 1937, and the Electrical Engineer Degree from Stamford University in 1940.

Q. Are you licensed in the State of California?

A. I am a licensed professional Electrical Engineer in the State of California.

Q. Are you a member of any electrical organizations or [fol. 315] Fellowships?

A. I am a Fellow of the American Institute of Electrical

Engineers.

Q. Would you state the type of business that Pacific Gas

and Electric is engaged in ?

A. Pacific Gas and Electric is engaged in both gas and electrical business from the standpoint of production, transmission, distribution and sale.

Q. Where is it located?

A. It is located in the northern and central portion of California, serving an area of approximately 90 thousand square miles.

Q. Can you give me the approximate installed generating

capacity?

A. As of the end of 1960 it was approximately five million six-hundred thousand kilowatts of installed capacity owned by the company, and approximately four-hundred seventy thousand kilowatts available from other sources.

Q. Can you give me an idea as to the size of P.G. and E.

compared to other utilities in this country?

A. By most methods of measurement P.G. and E. is the largest investor-owned electric utility in the United States, and I believe in the world.

Q. Would you describe briefly the climatic conditions [fol. 316] that are found in the area in which your com-

pany operates?

A. Our territory includes a variety of terrain, including coastal, mountain, desert, semi-arid regions. On the whole the climate is quite mild.

Q. Do you consider this to be quite a variety of climatic

conditions from an engineering standpoint?

A. Yes, I do.

Q. Now specifically what function does your company engage in in the field of electricity?

A. We generate, we transmit, distribute and sell to the consumer electric power.

Q. What are the sources of energy utilized by your company?

A. We have five energy sources. These include, No. 1, hydro-electric power from falling water and four sources of thermo energy used to operate steam turbine generators.

These four sources are natural gas, oil nuclear reactors and

geo-thermo power from underground sources.

Q. Now could you in a very general way describe the means by which your company generates electricity and transmits and distributes it to the ultimate consumer?

A. Now I can-

Q: (Interrupting) Now I would like you to do this as [fol. 317] though you were explaining this to a layman as

opposed to a technical approach.

A. Well, power is generated in quite a number of different plants located on different parts of the system. A typical plant might have several large generating units, say, of one-hundred thousand kilowatt capacity. Immediately after generation the power-it is generated at a voltage of twelve to, say, eighteen thousand volts. Immediately after it leaves the generator it is stepped up by a transformer to a transmission voltage. In our case this would normally be 220 thousand volts. The 220 thousand velt transmission system or bulk power system, as it is sometimes called, consists of several thousand miles of transmission lines interconnected covering the area of the system. Power is transmitted over these lines to particular load areas and stepped down at transmission sub-stations to intermediate voltages of, say, 110 thousand or 60 thousand volts. These intermediate voltage lines further traverse the local load areas and from them power is further stepped down and at distribution stations it is stepped down to, say, 12 thousand volts, 12 thousand volts being a typical distribution voltage such as we see carried on lines on the city streets. [fol. 318] From these distribution lines individual transformers step down again to the customers voltage of either 110 or 220 volts. This is very briefly the general picture of power generation, transmission, distribution.

Q. Now Mr. Johnson, would you state very generally what the duties of your own position are?

A. I have responsibilities covering two general functions, namely, planning or system planning and design. The design function includes specification and detailed design. Under these two headings I have responsibility for electric generating plants, high voltage transmissions lines, that is, lines which are 60 thousand volts or more—lines of lower voltage are considered distribution and come under a differ-

ent responsibility—transmission sub-stations which step down the voltage from the high voltage transmission to intermediate voltage, and high voltage underground cables. These are the main areas of my responsibility.

Q. Are you generally familiar with the type of the electrical conductors purchased by P.G. and E. for the trans-

mission of the electrical energy!

A. I am.

Q. Could you state generally what type of conductor [fol. 319] P. G. and E. purchases for overhead transmission!

A. For the last at least six or eight years we have purchased nothing but either A.C.S.R. or all aluminum conductor for overhead transmission lines.

Q. Now would you state why you purchase aluminum en-

A: This is a matter of economics consistent with satisfactory service. Very briefly and simply, one half pound of aluminum will perform electrically equivalent to one pound of copper if it is fabricated into conductor, and therefore, one could afford to pay roughly twice as much per pound for aluminum as for copper to break even. This is an oversimplification, but it is a pretty good rule of thumb, and the economics are overwhelming in favor of aluminum conductor at the present time.

Q. Now with respect to overhead transmission I believe you mentioned two types of aluminum cable, you spoke of bare aluminum cable and A.C.S.R.; would you distinguish the two insofar as use for overhead transmission is con-

cerned in your system?

A. I spoke of all aluminum, not bare, aluminum, and A.C.S.R. We use all aluminum conductor throughout the major portion of our system where we have light loading conditions, that is, we have no snow or ice load to contend with. In the mountainous areas or areas where we may [fol. 320] have exceptional weather conditions from the standpoint of wind or ice or snow, we will use the A.C.S.R. conductor which has a steel core and is therefore stronger.

Q. Now is the all aluminum conductor and the A.C.S.R. conductor that you use for overhead transmission lines insulated or bare?

A. It is entirely bare.

Q. Now are you familiar with the type of conductors that are purchased for underground transmission by your company?

A. I am.

Q. Would you state the type of conductors you purchase for underground transmission?

A. We use entirely copper conductor for underground

transmission.

Q. Now is this copper conductor that is used for underground transmission bare or insulated?

A. It is insulated.

Q. Now can you state why you use insulated copper conductor underground for transmission purposes exclusively?

A. This is as compared to aluminum?

Q. Yes, as compared to aluminum.

A. The answer lies in both economics and technical [fol. 321] factors. The equivalent aluminum conductor, equivalent electrically is larger in diameter. A large portion of the cost of an insulated underground transmission cable is in the insulation, which consists of a great many layers of specially prepared and applied paper. Therefore, due to the larger diameter of the aluminum it requires a considerably larger amount of insulation to be applied in the case of aluminum conductor, and this tends to offset some of the savings that might otherwise result from the use of aluminum. In addition to this there are technical factors that have not yet been satisfactorily resolved for the use of aluminum for underground high voltage cable. Some of these have to do with connections, possible chemical reactions of oil and other material used in the insulation.

Q. Now Mr., Johnson, are you responsible for the procurement of any of these conductors for transmission purposes?

A. No, I am not, I am responsible for the determination of specifications under which conductor may be procured, but the procurement is the responsibility of the Purchasing Department.

[fol. 322] Q. In other words, your group draws or you yourself, the specifications which are binding upon your procurement officials.

A. Yes.

Q. Now are you generally familiar, Mr. Johnson, with the

suppliers of your company for aluminum and copper conductors for transmission purposes?

A. Generally speaking, yes.

Q. Would you state for the record who your suppliers are

in the field of aluminum for transmission purposes?

A. We have bought conductor from ALCOA, Kaiser, Reynolds, Anaconda, General Cable and perhaps Olin Mathieson, I am not too certain on that one.

[fol. 323] Q. Do you know which companies supply copper

transmission conductors to PG&E?

A. Yes. We have bought underground copper cable from General Cable, from Okonite and from General Electric.

The latter is no longer a supplier.

Q. Now, in connection with the services of these aluminum and copper conductors to your company for transmission purposes, are there any services which these companies provide to your company?

A. Yes, there are.

Q. Would you generally describe the type of services you receive from these companies in connection with the alum-

inum conductors which you purchase?

A. Yes. I would say that there are perhaps four general categories of service. The first would be the supplying of information on the sag and tension and conductor creep. Aluminum conductor, and I am speaking particularly of all aluminum will stretch with time and it is important in installing this conductor to know how much it will sag ten years from now and we obtained information from the supplier as to the characteristics of this long-term creep or sag, so that we can install a conductor initially to the proper sag and tension so that it will have a proper ultimate sag.

[fol. 324] The second category—

Q. May I interrupt you a moment?

A. Sure.

Q. Mr. Johnson, now you speak of this creep and sag characteristic of aluminum conductors. Do you have this same problem in connection with your copper transmission conductor?

A. You are speaking of the underground or the over-head?

Q. Well, you only use copper underground?

A. No. You do not have the same problem, because the copper underground is lying in a conduit. It is under no tension after it is installed. It is quite a different type of problem of installation.

Q. Are you familiar with the characteristics of copper to such an extent as to tell me whether you know as whether this same problem that you have mentioned in connection with aluminum is also present in connection with copper, were copper used for overhead purposes?

A. To a much lesser extent. There is much less creep in .

copper than there is in aluminum.

Q. Now, you may go on to the second.

A. The second category of engineering service that the aluminum conductor manufacturer of supplies has to do with the problem of vibration. Are all overhead conductors [fol. 325] subject to certain amount of vibration caused by the wind and aluminum conductor or aluminum as a metal is more susceptible to fatigue failure from this cause, and it is necessary to use what is known as vibration dampers, or protective armor rods at the points of support to reduce the possibility of cracking from fatigue failure due to vibration. And we look to the manufacturers of the conductor to supply information as to how best to — this.

The third-

Q. Now, before you go to the third one, from your knowledge of the characteristics of copper were copper used for overhead transmission purposes, to what degree would this second problem that you speak of affect the copper conductor?

A. To a lesser degree. It is still present but to a much

lesser degree.

Q. Now, you may go to the third.

A. The third category of problems would be in the field of corrosion where aluminum conductor particularly in coastal areas may be subject to corrosion effects due to salt fog, and we seek the advice and obtain help from the manufacturers on the best methods of inhibiting corrosion by the use of corrosion inhibiting greases, or the best techniques in the make-up of connections and footings.

[fol. 326] The fourth category—

Q. May I interrupt you again before you go to the fourth one?

A. Sure.

Q. From your knowledge of copper and its characteristics, were it used in your system as an overhead conductor, to what degree would this same problem be present in copper as an overhead conductor?

A. In general the corrosion problem is much less with

copper than it is with aluminum.

Q. And this is because of basic differences in the character of the two methods?

A. It is the chemical reaction differences in the two metals.

Q. I see. Now, you may mention the fourth.

A. And the fourth item I would mention is in the physical problems of construction, of handling the conductor, the problem of stringing it, of preventing damage to the conductor, types of reels, stringing equipment, what one might call the practical problems of field installation. Here again aluminum is more easily damaged because it is a softer metal than copper and thus requires more care in handling.

[fol. 327] Q. Now, all these problems that you have mentioned in connection with aluminum, I believe you said that your suppliers render guidance and advisory services and similar services to you in connection with these problems; is that correct?

A. They do.

Q. Do all of your suppliers render these services?

A. To varying degrees.

Q. To varying degrees?

A. Some more so than other.

Q. Some more so than others. Is this a valuable consideration?

A. It is.

Q. Does the fact that these services are offered to you by these companies in any way have a tendency to shape your recommendation as to who the successful bidder may be?

A. We definitely make recommendations to our purchasing department regarding this type of service and its value to us, so that purchasing may have its recommendations in guiding them in making purchases.

Q. Does ALCOA render services to you as a supplier in this connection?

A. They are outstanding in this respect.

Mr. Melchior: They are outstanding in this respect. [fol. 328] No further questions. No further questions. Your witness.

The Court: Take a short recess.

. (At this point a recess was taken after which the trial was resumed.)

Cross-examination,

## By Mr. Adler:

Q. Mr. Johnson, in your testimony describing the transmission system of Pacific Gas and Electric Company, you were referring exclusively to bare cables used in the transmission, in overhead transmission.

A. Yes, in the overhead lines, that is correct.

Q. So far as the overhead transmission is concerned, you are not referring in any way to covered or insulated products?

A. No, sir.

Q. Is that correct. In your testimony you referred to several of your suppliers of overhead cable, ACSR. Was the Rome Cable Corporation prior to April of 1959 one of your suppliers of that product, based on your knowledge?

A. Not to my knowledge. Certainly not in any major

way if they were.

Mr. Adler: No further questions.

[fol. 329] Mr. Melchior: No further questions from the Government.

(Witness excused.)

Mr. Melchior: I suppose we can resume with Dr. Martin now, if it please the court.

DAVID D. MARTIN, resuming the stand, testified further as follows:

### Cross-examination (continuing)

### By Mr. Bergson:

Q. Mr. Martin, when we adjourned for lunch this noon we had finished discussing Government Exhibit 435, and I would now like to invite your attention to Government's Exhibit 436, which is your Table No. 3, I believe?

A. Yes.

Q. Which is entitled "Shipments of aluminum wire and cable, insulated or covered, 1955 to 1959." And again I would like to invite your attention to the explanatory notes on page 2. I note that in footnote 1 you refer to four companies which had shipments of insulated or covered aluminum conductor in 1959. One of them is Circle Wire and Cable, which you said had one per cent in 1959. Continental [fol. 330] which you said had approximately A of a per cent. G.E., which had 1½ per cent. Triangle, which had .1 of a per cent, or less than .1 of a per cent.

Now, I would like to ask you again why you didn't include those companies on the face of the chart when you included companies which in 1959 had .6 per cent or even a company

which had 0.0 per cent.

A. My answer is the same, I think, as I gave earlier in respect to No. 1. Now, the firms listed on the face of the table itself all reported to Business Defense Services Administration. The table shows the total industry shipment report to B.D.S.A., and the breakdown of this as far as possible into the forms, reports on their shipments as reported to be B.D.S.A.

[fol. 331] The Court: A little louder.

The Witness: The shipments that you referred to by these four companies were not reported to the BDSA even though in some specific years they appear to have produced more than 10,000 pounds per month. I noted that in the footnote and gave the percentages on them. I might have put it in the table. I considered putting it in the table. I had a number of alternative ways to set the table up. I could have had several categories of firms, and I think that

possibly if I were doing it over again I would do it somewhat differently, but I chose at the time I made the decision to list on the front here the firms reporting to BDSA and to explain what other information was available to me in the footnote.

I indicate that if I had chosen to add these into the total and computed the percentages on that basis, that the market share on that table would have been changed by more than six-tenths of one percentage point.

### By Mr. Bergson:

Q. You don't consider six-tenths of one percentage point

[fol. 332] significant?

A. I thought it was small enough since that was the maximum, it would not be that not for all of them, that would be the worst situation, that would be the largest sales in the years with the smallest totals, and this for most of them would be considerably less than that. In other words, I placed a maximum amount of error in leaving those shipments off, and it seemed to me to be small enough that I was justified in doing it.

Q. If that six-tenths of one percent is twice the threetenths of one percent that Rome had in ACSR, bare, in 1958, the year immediately prior to the acquisition—

A. That is certainly true, Mr. Bergson, but let me point out that the six-tenths that I am talking about would not be on a figure that is three-tenths plus or minus six-tenths, it would be on a figure that is 22 percent or 26 percent. The amount that the market share would be affected would depend on the magnitude of that market share.

Q. I understand that, but the three-tenths which would be added to ALCOA's is the same sort of three-tenths that would be affected by one of the largest ones, isn't it?

A. It would be added proportionately, however, to all [fol. 333] the figures in the picture.

Q. I am sure that that is so, but what I am trying to point out is that the six-tenths of one percent—

A. It would be reduced, I might say, it wouldn't be added.

Q. Whatever it is, it is six-tenths of one percent and that is twice the percentage that Rome had in the Government's line of commerce ACSR aluminum cable, bare, which

is charged by the Government to be a significant factor in determining whether or not this merger substantially lessened competition, yet it isn't significant enough for you

to put on a chart.

A. The six-tenths that I am talking about in the footnote is the maximum amount by which any figure, any percentage figure on the face of the chart would be reduced if the industry total were increased by the amount of those shipments.

Q. All right. ALCOA-

A. Not the same sort of thing as the shipments of ALCOA, it is a margin.

Q. ALCOA had the largest share, right?

A. In 1959?

Q. In 1958 or in your Chart No. 2, Exhibit 435. A. Well, I thought we were talking about 436.

[fol. 334] Q. I am trying to relate the relative importance of these percentages. Now you have six-tenths of a percent of the total; you have companies that you don't report on the face of the chart whose combined total was three per-

centage points!

A. I don't think these are comparable. You are comparing in the one case the upper limit on an error that might be in the percentage; the other case, the magnitude of shipments of a company compared with the base, and if I were stating that there might be a six-tenths of a percent error in a figure the size of this three-tenths, that would be another matter, but the error on those figures would be very, very much smaller than that. I have placed an upperlimit. I certainly don't claim that these figures are exactly right. Certainly they have to be taken with some possibility of a little change. You see, that is the basic reason for having five years instead of one year, to get the picture of the market. They vary from year to year. They might be a little different if we had taken fiscal years ending June 30 instead of December 31. In that footnote I am trying to indicate the degree to which the shipments of these companies that did not report to BDSA would affect the structure picture I am giving on the other page, and I don't [fol. 335] see that one can evaluate the significance of a percentage, six-tenths, in one context and carry that over to a completely different context.

- Q. Did this three percent here on the back, did you take the trouble to increase the BDSA total by that three percent?
  - A. You mean on table-

Q. On Table 3, you have the total industry shipments reported to BDSA as 100 percent.

A. Did I take the trouble to take the General Electric

and Circle and those figures and increase the total?

Q. Yes.

A. I did, yes indeed, I increased it.

Q. You mean these figures you used aren't the BDSA

figures ?

A: No, they are the BDSA figures. I thought you asked did I in working up the table take the trouble to see what happened.

Q. You had figures for Circle, Continental, G.E. and Tri-

angle which were in addition to the BDSA totals.

A. I might have added them on.

Q. And if you had added them on, the percentages of Rome and ALCOA would be smaller?

[fol. 336] A. The percentages would be smaller, the maximum amount that any percentage could be smaller would be six-tenths of a percent. That is what the footnote is for. I think of that margin of error, or from that source of error I have a possible error that I have stated the limits of in the footnote.

Q. Here in this chart we are talking about percentages that are even greater than the percentages that we were talking about this morning. For example, we have a whole percentage point so far as Circle is concerned, and a percent and a half so far as G.E. is concerned, and yet on this chart, sir, you have several companies with less than a full percentage point for 1959.

A. Well, I think, Mr. Bergson, that one of the reasons why this occurred was that I was not drawing the chart just for 1959, I was drawing the chart for several years in order to get a broader base and a better picture of the market structure. If I had only been doing it for 1959 I

would have done things differently, I am sure.

One of the percentages, for example, for 1959 is zero. The shipments were zero. This was for Westinghouse, but for 1957 it had a larger amount; for 1956 it had a differ-

ent amount. It reported it. The reason it is in there is that [fol. 337] it had more than 120,000 pounds in 1956.

Q. Let's take Westinghouse for example, you have threetenths of a percent as a maximum for Westinghouse in any one year, that was in 1956; you have two-tenths of a percent in 1957 and you have nothing in 1958 and '59. Now, if you applied the same reasoning, why wouldn't Westinghouse go into the footnote too?

A. I had two criteria that were relevant and were used as to which I put in the chart and which ones I put in the footnote. One of these was whether or not the firm reported to BDSA; the other one was did it report that it produced more than 10,000 pounds per month. If in no year—I applied this, however, for each year. If it reported to BDSA it went into the face of the chart unless it had reported something less than 10,000 pounds per month, less than 120,000 pounds in any year.

Those were the bases on which I made the decision. I am quite willing to grant I might have done it another way, and I imagine that if I had done it another way you may

well have asked why I didn't do it this way.

Q. It would have presented a different picture of the industry, wouldn't it?

[fol. 338] A. I don't think so, I don't think the picture of the industry was affected by the decision I made on this

point.

Q. You have tucked away in a footnote a company which is one of the major industrial concerns in the United States, with vast resources, General Electric Company, which produced 1.5 percent of the product covered by the chart in 1959. You also have tucked away in a footnote a firm which is a subsidiary of one of the great copper producers in the United States, Circle, which is a subsidiary, as you know, of Cerro de Pasco, and that is not on the chart. Now I just can't escape the conclusion that this chart was designed for the purpose of maximizing out the position of ALCOA and Rome without giving true effect to what the industry structure is.

A. Well, I don't agree with that conclusion. I tried to design the chart so as to do two things: one, take a very big mass—and I assure you it was a very big mass—of letters and materials and Government publications and interratory

answers and try to pull out of this what I thought was the meaningful, useful information in looking at the market structure of this broad line, and that was one thing. The other thing was to pull it out so it would be as clear and [fol. 339] simple as possible. I wanted to be absolutely sure I made it as complete as possible. I would be most derelict in my duty here if I had not put into the picture General Electric's shipments in 1959.

You say I tucked them away in a footnote. Perhaps I made a mistake when I made this decision, but I did it with the assumption that people read footnotes, and particularly

lawyers.

Q. And that, of course, is why you put Roebling on with only 2 percent and .6 percent, because when they read the footnote they would have found it was acquired by Reynolds Metals Company.

A. I put them on because in 1959 it produced more than

120,000 pounds, and it also reported that to BDSA.

Q. Well, let me ask you this question, do you think that this chart, No. 3, Government Exhibit 436, on its face accurately portrays the industry position of the companies in the industry?

A. I think it does. I am not sure what you mean by on its face. I think the footnotes are part of the chart. The footnote numbers are on the chart. They refer to notes which are there, and I certainly would have been most unwilling to have submitted the table without the footnotes, [fol. 340] and I would certainly urge that anyone reading the table read the footnotes.

- Q. Why did you put that note on about Roebling?
- A. You mean why did I-
- Q. Since in 1959 Roebling was unconnected with Reynolds or any other primary producer of aluminum, why did you put that footnote on?
- A. Well, you asked me this morning and I answered it, I am not sure exactly what I said.
- Q. Well, let's never mind what you said this morning, tell us what the fact is.
- A. I have been thinking about it as a matter of fact since you asked it this morning, and when I think back over it as to the process that went through my mind, the first thing that I encountered was in trying to put the names of the

companies on that I had as one company the very clumsy name, from the standpoint of putting it on the chart, of the John A. Roebling Sons, Division of Colorado Fuel and Iron Corporation, and I got to thinking how shall I do that, and shall I call it Colorado Fuel and Iron Corporation or shall I call it John A. Roebling Sons Division, and stop at that point, and then I realized that I had to look into the question of what was the name of the firm that produced and [fol. 341] shipped these shipments during the years that I had them included, and I found that though this plant was at one time part of Colorado Fuel and Iron, it was at the present time, the time at which I made the chart, a part of Reynolds Metals. So I thought the best thing was to put the whole story in the footnote.

Q. Why didn't you put Western Electric, a subsidiary of AT&T in if you were so concerned about those things?

A. Well, I don't think that it occurred to me. I should have.

Q. Wasn't the real reason that there was an acquisition involved, Dr. Martin?

A. An acquisition is certainly relevant, because an acquisition being involved brings up the problem of how to describe the shipments.

Q. It was an opportunity to testify on the chart.

Mr. Melchior: Your Honor, I think the witness has answered this question.

The Court: He has. It is an absolutely gratuitous statement and of no value, a statistical chart, it doesn't belong in [fol. 342] there. If he was giving statistics for this company for 1959 the company was alone, was operating alone, he had the statistics, and the addition of those few words is gratuitous and adds nothing to the chart, except this, it is a little dig, that's all, it isn't going to affect me one way or the other.

### [fol. 343] By Mr. Bergson:

Q. Dr. Martin, addressing yourself to the face of the chart and your footnote 4, Olin Mathison acquired Southern Electric Company in 1957—'56 or '57—1957. This chart shows that prior to its integration Southern Electric had a greater percentage of the market in 1956 than it has ever

had as a part of the integrated Olin Mathison Chemical Company; is that right?

A. Yes.

The Court: Are you going to leave that exhibit?

Mr. Bergson: I think so, your Honor. I just want to check to see if I left out anything. Yes, I am finished with that exhibit.

The Court: Just one thing, Mr. Martin. I am not certain that I understand this .6 of one per cent of these companies that you left out. Your note says, "The addition of the shipments to BDSA." What is BDSA?

The Witness: That is the first line, industry total as

reported to be BDSA.

The Court: The total would change my market share by more than .6 of one percentage point. Now, does that mean [fol. 344] changed in either direction?

The Witness: Change it down for all firms. It would pull ALCOA down a little bit; it would also pull Anaconda down a little bit and Kaiser down a little bit and every other one down just a little, because we would be dividing by a bigger base. Some of them would go down very small amounts. The largest they could possibly go down would be .6.

Q. That change, then, that you refer to in your footnote, is a change in any market share by no more than .6. That would be the reduction change, in reducing the amount of the firm's share in the market.

The Witness: Yes, sir. Perhaps I can explain it this way. If you put all of these companies together for 1959, the combined shipments of these companies range from one per cent in 55 to 2½ per cent in 59. Now, this 2½ per cent—

Mr. Bergson: Three.

The Witness: Is it three? It would have to be taken off of the companies that are on the face of the chart.

The Court: So that there may be, if I understand you right, an error in aluminum, in ALCOA and Rome? Does that apply to every year?

[fol. 345] The Witness: Yes, sir. It would apply to every year, but the biggest effect would be in '59.

The Court: I see.

The Witness: Because that is the year that the biggest

amount was unreported to be BDSA. .

Mr. Bergson: Your Honor, one of the reasons I want to bring this out, and I am sure it is apparent to you, that in one line of commerce ALCOA is accused of substantially lessening competition by ALCOA .3 of one per cent. And yet the .6 of one per cent is not sufficient to have in a chart.

The Court: I think I understand it. But the change would always be downward, would be a lessening of the share of the market rather than an increase of the share of

the market.

The Witness: Yes, sir. It would be downward for a percentage less. It would be one to three per cent, sir, from these other firms. The bigger the firm the more it would go down. The smaller the firm the less it would go down. [fol. 346] The Court: So, if you apply it to ALCOA, which is apparently is one of the larger—well, I guess there are some others larger—well, it is one of the largest, that effect would be greater than if it was applied to Rome, which is one of the smaller ones.

The Witness: Yes, sir. In the case of ALCOA in 1959 it would drop to from .1 to .2, I would roughly estimate, to maybe 11.9, or 12.1, whereas in the case of Rome it would

drop it from maybe 4.4 to 4.3.

Mr. Bergson: Well; your Honor, I can skip Chart 4.

The Court: Good.

Mr. Bergson: Chart 5.

The Court: All right.

### By Mr. Bergson:

Q. Government's Exhibit 438. In that chart, Dr. Martin, if I am going to characterize it as shipments of aluminum conductor wire and cable accounted for by integrated producers 1955 to 1959, I would like to ask you why you didn't include 1960?

A. I think that my reason for not including 1960 is that I took the first chart and took information off of it and made this one. It is the same reasoning. This was taken [fol. 347] right from the first part, this part of the chart put together, and I took the years I had there.

Q. The information for 1960 was available, wasn't it?

A. I am not sure the industry total was available. The

breakdown between non-integrated and integrating companies. I think it was available, yes.

Q. Now, let's look at 1958 where the non-integrating com-

panies had 18.4 per cent; right?

A. Yes.

Q. And that 18.4 per cent, according to your chart No. 1, Rome represented 1.6 per cent; is that correct?

A. 1958? 1.3 per cent, it would be.

Q. Is it! Defendants' chart No. 1!

A. Talking about 1958 in aluminium conductor wire and cable, 1.3.

Q.1.3. I am sorry. Now, if you subtract that 1.3 from the total of the non-integrated, that would leave for the remaining integrated—

Mr. Adler: Non-integrated.

Q. Non-integrated, I mean, 17.1; right?

A. Yes. No. Yes, that's right.

Q. Now, the merger took place in 1959, in April of 1959. So in your 1959, I think footnote 7 says that you have infol. 348] cluded Rome for the whole year in ALCOA's shipment; is that correct?

A. That is correct.

Q. So that the remaining independent share of the market increased after the merger from 17.1 per cent in 1958 to 19.9 per cent in 1959; right?

A. Right.

Q. And that is not accounting the .8 of a per cent which you omitted in Chart 1, which was in the footnote?

A. I am not sure just how that would have been divided between the two.

Q. None of them were integrated?

A. That's right.

Q. So that it would make the non-integrater's share in 1959 20.7, if you included that.

A. Yes.

Q. As against 17.1. Now, I show you Defendants' Exhibit AR-1 for identification, which has previously been discussed with you and the figures in which—it has been previously shown to the Government's attorneys and the figures of which have not been disputed and I ask you what the per-

centage of the market was enjoyed by the non-integrated producers in 1960?

A. In 1960? 20.5, I think.

[fol. 349] Q. So that since the merger, if you took Rome out of 1958 so that we are concerned only with the remaining non-integrated, their share, and let's forget these other companies which we have no figures on for 1960, their share was 17.1 in 1958; it increased to 19.9 in 1959 and it further increased to 20.5 in 1960; is that right?

A. That is the shares of the companies not counting

Rome.

Q. That's right. Now, I invite your attention to Government's Exhibit 439, which is your chart No. 6, I believe?

A. Yes.

Q. And I suppose your answer as to why you didn't include 1960 is the same as the reasons you have given me before so I won't go into that all over again.

A. Yes.

Q. Now, in 1958, when Rome was included with the non-integrated, the non-integraters had 13.7 of the market; right?

A. Yes.

Q. And Rome had .3 of one per cent in 1958?

A. I have to check that.

Q. I think that is your chart 2.

[fol. 350] A. ACSR?

Q. Chart 2, I think.

A. Yes.

Q. So that if you excluded Rome in 1958, the non-integraters would have 13.4; right?

A. Right.

Q. In 1960, 1959, according to your tabulation the share of the non-integraters rose to 16.3; correct?

A. Yes, sir.

Q. Now, just so that we will complete the record on this, I show you Defendants' Exhibit AR-2 for identification and ask you what share the non-integraters had in 1960?

A. 16.2.

Q. Right. So that in care aluminum conductor, ACSR, the integrated share, the non-integrated share, excluding Rome in 1958 was 13.4; in 1959 it was 16.3 and in '60 it was 16.24 high!

A. Yes, sir.

Q. Now, I invite your attention to Government's Exhibit 440, which is your chart No. 7, which is in abbreviated terms, shipments of aluminum wire and cable, insulated or covered, accounted for by integrated producers 1955 through 1959," and again I suppose your answer for not including 1960 is the same?

[fol. 351] A. Yes.

Q. The material was available to you but because of the manner in which you prepared the other charts you chose not to bring this up to 1960?

A. That's right.

Q. Now, in 1958 Rome's share of the non-integrated producers was 4.7; is that right? Refer back to Chart 3, I think.

A. 4.7, yes, sir.

Q. So if you eliminated Rome the share of the remaining non-integrateds would be 29.9?

A. Yes, sir.

Q. In 1959 the share of the other non-integraters had increased to 31.9; is that right?

A. That's right.

Q. And now I show you Defendants' Exhibit AR-3 for identification and ask you to state the percentage of the non-integraters for 1960?

A. 32.7.

Q. So that from 1958, the year preceding the merger, the share of the non-integraters has gone from 29.9 to 31.9 in 1959 to 32.7 in 1960?

A. That's right, the share of the non-integrating excluding Rome.

[fol. 352] Q. Right. New, I would like to invite your attention to Government's Exhibit 442.

Mr. Melchior: May I interrupt a minute, Counsel, before you proceed to the next tabulation! Now, with respect to Government's Exhibit 438, 439 and 440, I take it you are not challenging the accuracy of any data contained thereon; is that correct?

Mr. Bergson: We told you we didn't.

Mr. Melchior: I just wanted to make it clear.

Mr. Bergson: We are challenging the use that is made of the data.

Mr. Melchior: One more question, Counsel.

Have you asked the witness with respect to the year 1960, whether or not he had complete information on that year, so he could have done what you have had him do on the basis of your tabulations? Have you asked him that question?

Mr. Bergson: I have asked that question and the witness .

responded, I believe, that he had.

Mr. Melchior: Was that your answer?

The Witness: Yes.

The Court: That is my understanding.

[fol. 353] The Witness: My answer was that I made these tabulations from the other tabulations on which I did not have complete information. But parts that are actually on here I think I could have gotten for 1960.

Mr. Melchior: For the year 1960 for all companies con-

cerned.

The Court: Now listen. I don't know what we are getting at. I don't think you ought to start examining the man now. As I understand it, for the last two or three charts the witness says the reason he didn't give 1960 was the reason as he explained a couple of charts before that. And he started it with Chart 1 from '55 to '59 and he kept it that way. That is all there is to it.

Mr. Bergson: But then he did have information available—

The Court: Yes.

Mr. Bergson: -for 1960.

The Court: Yes.

### [fol. 354] By Mr. Bergson:

Q. Let me ask you if there is any doubt about this, let me ask that document entitled United States Department of Commerce, Business and Defense Service Administration, Aluminum and Magnesium Division, dated November 8, 1961, be marked for identification as defendants' exhibit AR-4:

(Document above identified marked as Defendants' Exhibit AR-4 for identification.)

- Q. I show you defendants' Exhibit AR-4 for identification, which is dated November 8, 1961, and ask you whether you have a copy of that document?
  - A. Yes, I do.
- Q. And did you have a copy of it at the time it was issued?
  - A. I am not sure just when I got it.
- Q. Did you have a copy of it before you prepared your charts?
  - A. Not all of them, no.
    - Q. Before you prepared this chart?
- A. I am not sure. This was one of the first charts I prepared.
- Q. These charts were submitted to defense counsel in January.
- [fol. 355] A. I had this release, yes, before I submitted my charts to you. That publication was cited in some of my other sources.
  - Q. I think it is too. Now-
- A. If I may, Mr. Bergson, I did not think I did have for 1960 the individual company information that I put on this chart for all the other companies.
  - Q. But you had the information for the total?
  - A. For the total, although not the individual companies.
  - Q. Broken down, integrated and non-integrated?
- A. Yes. If I had put 1960 on I could have given that information but not anything, of course, for the other years.
- Q. You could have shown this percentage figure without giving a detail as to the companies?
- A. Yes, I could have done that. I might say I couldn't have done that until the point in my work after I had already done considerable work on this. I could have gone back and changed it, I suppose.
  - Q. This is a lawsuit, Dr. Martin.
  - A. Sure.

Mr. Bergson: Will you please mark as defendants' Ex-[fol, 356] hibit AR-5 for identification a document entitled Directory of Aluminum Suppliers, Revised April 1, 1961, put out by the United States Department of Commerce, Business and Defense Service Administration. (Document above identified marked as Defendants' Exhibit AR-5 for identification.)

## By Mr. Bergson:

- Q. Dr. Martin, addressing your attention to Exhibit 442, which I think is your Chart 8-A—
  - A. Yes.
- Q.—I show you defendants' Exhibit AR-5 for identification and ask you if this is the directory of Aluminum Suppliers to which you referred in that chart?
  - A. Yes, it is.
- Q. I would ask you to look at this directory and tell us how many suppliers of aluminum wire and cable are listed in that directory.
  - A. Well, the directory lists-
  - Q. I think you will find it on page 18.
- A. Thank you. Two categories, suppliers of ACSR and aluminum cable, bare, and suppliers of wire and cable, [fol. 357] insulated or covered. The directory lists 11 producers of ACSR and aluminum cable, bare. 29 producers of wire and cable insulated or covered.
- Q. Thank you. In your work as an economist and statistician, Dr. Martin, are you quite familiar with the business in Defense Services Administration of the Department of Commerce?
- A. Well, I am not sure I know just what you mean by "quite familiar."
- Q. Do you know how it is broken down by divisions and so forth, aluminum division, copper division?
- A. Aluminum-magnesium are the divisions with which I have been concerned in my work on this case.
- Q. And do you know the purpose for which the aluminum, and magnesium division was created?
- A. I am not sure that I could answer that question without making a study of the legislation or executive order that set it up.
  - Q. Well, if you don't know--
  - A. I don't know.
  - Q. -I won't pursue it, I will go to something else.

The Court: Just before you go, let me ask about this 442. [fol. 358] This is an exhibit which shows the companies

listed as producing aluminum conductor wire and cable. I take it from the way you talk and one look at it, it doesn't look as if it is complete. I don't mean that your exhibit is not complete, Mr. Martin, because probably it is, because you say it is, but do you mean to say that these three companies are the only companies—no, I am wrong, these are

only the ones that were not listed.

Mr. Bergson: In 1955. My purpose in inviting Dr. Martin's attention to the directory was to eliminate any misapprehension that there were only a few companies in this field, and I am glad you asked your question, your Honor, because I did overlook a question and I don't know whether you know the answer to this, and if you don't know it I won't press it, but do you know how many companies were manufacturing so-called aluminum wire and cable products in 1950?

[fol. 359] The Witness: No, sir, I don't know.

The Court: Well, again I come back, being a little selfish I gauge all of these exhibits as, all right, what am I going to do with them? I suppose—is this the purpose of the exhibit, to show that three companies stopped manufacturing this particular item during that six-year period?

The Witness: No, sir. You want me to answer the ques-

tion?

The Court: I don't care who answers it. Honestly, I don't know, what about it?

The Witness: It is just the opposite, it is to show that insofar as the BDSA directory gives us evidence on this question, there were only three that came in and began to produce. The footnote indicates this is not quite the case, however, because of the three that in 1961 the BDSA listed as being producers, two of them were already producing earlier, Olin was listed because it had acquired South Wire and they changed the disting from South Wire to Olin; [fol. 360] Circle for some reason began to report to BDSA, became known to BDSA and was put in the directory, although our own inquiry indicated it was producing right along but wasn't reporting. They began to report and were put in the directory.

Mr. Bergson: It is barely possible there are others who have not yet reported to BDSA.

The Witness: That is possible.

### By Mr. Bergson:

Q. Such as those companies who were referred to in the footnote to Exhibits 1 and 3. Circle is one of them.

A. Circle is one of them.

Q. How about G.E., was G.E. on this list? I don't remember.

A. G.E. was on the list.

Q. Was on the BDSA list, yet not included in the share?

A. Not a list of companies that reported, a list of companies that BDSA thought produced the product, right, and there could be many more. There are some on there that [fol. 361] possibly don't produce the product.

Q. And it is quite possible there are others who do who

are not on it?

A. It is possible.

Mr. Melchior: If it please the Court, I might say that the defendants' Exhibit for identification AR-5 does indicate

that General Electric Company is on the list.

Perhaps I could clarify this tabulation for your Honor. If you would look at this tabulation absent the footnote, it would indicate that in 1961 there were only three new companies in the directory that were not already in the business in 1955. So at first blush it would appear that over that roughly six-year period there were three new entrants. into the aluminum wire and cable field, which is bad enough. However, when you take the footnotes into consideration you will find first that actually Circle is not a newcomer because Circle in 1955 was already producing it and was not [fol. 362] in the directory in 1955. On the other hand, Olin-Mathison Chemical Corporation is really not a newcomer either, because they acquired Southern Electrical Company, which was in the 1955 one. So actually according to this tabulation there is only one new entrant to the field. That is the purpose of the tabulation..

The Court: All right.

Mr. Bergson: According to BDSA, since 1955.

Mr. Melchior: Precisely.

The Court: All right. Recess until tomorrow morning at ten o'clock.

(Whereupon at 4:58 p.m. the trial was adjourned to Thursday, February 8, 1962, at ten o'clock a.m.)

[fols. 363-364]

[Title omitted]

# Transcript of hearing-February 8, 1962

[fol. 365] The Court: All right, gentlemen, I guess we

can go ahead.

Mr. Melchior: May it please the Court, if we could indulge your patience a little longer, and defense counsel has expressed no objection, if we could put three witnesses on the stand before we resume the cross-examination of Dr. Martin.

The Court: All right.

WILLIAM A. HICKSON, JR., called as a witness in behalf of the Government, being first duly sworn, testified as follows:

#### Direct Examination.

### By Mr. Wertheimer:

Q. Will you state your full name and position, please?

A. My name is William A. Hickson, Jr., I am the mana-

ger of the Distribution System, Design Division of the Distribution Engineering Department of Long Island Lighting Company.

Q. How long have you been with the Long Island Light-

ing Company!

A. Phave been with the Long Island Lighting Company fifteen and a half years.

Q. What was your job prior to the present one?

[fol. 366] A. I have been in my present position two years, and prior to that I was manager of The Materials and Methods Division, which is the other half of the Distribution-Engineering Department.

Q. In the Materials branch what were your responsibilities?

A. I was responsible for evaluating the performance of existing materials that I used in our gas and electric distribution system, and reviewing and determining the characteristics or improved materials for possible use on

the system. This includes establishing purchase and test specifications for the purchase of these materials, and qualifying the products for engineering approval. It also includes the preparation of construction standards to insure proper and uniform application on the system.

- Q. What are your responsibilities in your present job, Mr. Hickson?
- A. In my present job we reviewed the gas and electric system conditions on a continuing basis to insure its overall orderly development, and this includes the establishment of design objectives for the distribution system as regards the quality of service, electric service, for example, that we give the customer, such as the type of voltage, voltage regulfol. 367] lation, the minimum interruption to service, and adequate research capacity. These objectives together with load density and environmental conditions that we have will determine the mechanical and electrical characteristics of the distribution system components, and these components include the poles, the wires, transformers and the meters.
- Q. In other words, in your present job you design distribution lines for the Long Island Lighting Company!

A. Yes, I do.

Q. About how many dollars worth of additions for your electric distribution system were you responsible for last year?

A. For 1961 we designed approximately sixteen million dollars in addition to our distribution system, electric.

### [fol. 368] By Mr. Wertheimer:

Q. Have you any academic degrees, Mr. Hickson?

A. I have a bachelor of science degree in physics and engineering from Hofstra College.

Q. I wonder if you could describe in general the size of

the Long Island Lighting Company.

A. Long Island Lighting Company supplies most of Nassau and Suffolk Counties in addition to the Fifth Ward of Queens County. We are adjacent to the City of New York on the westerly boundary and we extend easterly to Montauk Point, entirely surrounded by water.

Q. About how many square miles would be included in this area?

A. Our electrical service area is approximately 1100 square miles.

Q. How many customers do you have for electricity?

A. At the end of 1961 we had approximately 600,000 electrical customers.

Q. What was your peak demand?

A. Our peak demand was 1,780,000 kilowatts.

Q. On the system as you have described it to us do you

[fol. 369] have any commercial areas?

A. Yes, we do. We have large shopping centers and large business areas in the westerly portion which is adjacent to the New York City line.

Q. Do you have any rural areas?

A. Yes. As our territory extends easterly it becomes progressively less populated to where we get out to Montauk Point which is definitely rural in character.

Q. Have you any areas bordering the seacoast?

A. Yes. Our service area except where we abut the New York City line is entirely surrounded by water. The Atlantic Ocean on the south shore and Long Island Sound on the north shore.

Q. Do you have distribution and transmission lines both overhead and underground?

A. Yes.

Q. Turning to your overhead transmission lines, what kind of conductor do you use thereon?

A. We use aluminum or ACSR conductors. All are aluminum in our transmission lines at the present time.

Q. Do you use them throughout your system?

A. Most of our new construction is in the use of alumi-[fol. 370] num. We do have some transmission lines which are subject to severe corrosion and if we had to replace those lines we would use copper conductors.

Q. Do you have any maps indicating those areas of your system in which you use aluminum and in which you use

copper!

A. Yes, I do.

Q. I wonder if I could have the map.

A. (Witness hands map to counsel.)

Mr. Wertheimer: At this time I would like to mark as Government's Exhibit 472 for identification two maps of the Long Island Lighting Company, the first marked "Dis-

tribution, General; Map showing copper and aluminum areas." The second identified as Distribution, General Map showing copper and aluminum areas in Great Neck."

(Map above identified marked as Government Exhibit 472 for identification.)

Q. Now, Mr. Hickson, do these maps accurately indicate those areas of your system labeled zoned for aluminum and those zoned for copper?

A. Yes, they do.

[fol. 371] Q. Were these maps prepared by your department?

A. Yes. These maps are prepared by our department and they are—although I am in the distribution department, the same zoning is used by our engineering department that designed the transmission lines.

Q. In other words, the areas indicated on these maps would be accurate for both your transmission and distribution lines?

A. Yes.

Mr. Wertheimer: At this time the Government would like to offer GX 472 for identification into evidence.

Mr. Adler: No objection.

The Court: Received.

(Government's Exhibit No. 472 for identification received in evidence.)

Q. From this map it appears, Mr. Hickson, that your aluminum area includes most of your territory. I see your area called your copper area on the title of this map borders the seacoast; is that correct?

A. Yes.

Q. I wonder if you could explain why.

[fol. 372] A. When we first started to use aluminum conductors exclusively for distribution our prior testing and experiment indicated that we would have problems that we had not yet solved in this area along our shores where the environment was such that the aluminum unprotected or a bare conductor would be subject to corrosion due to salt fog, salt spray and sand blast. Therefore it became expedient for us to take a conservative approach zoning the sur-

rounding area in which we could use aluminum and thereby also zoning the area where we would only use copper.

Q. What were the problems of sait water in regard to the use of aluminum?

A. The problems that we have as far as the salt water is concerned are really one of a lack of advancement in the art as far as connectors are concerned. We have a real problem with the saft water on the conductors, either due to fog or spray injuring the reliability of the conductors themselves. One of the problems of using aluminum is to insure a good connection around salt water. We have not yet learned how to use it economically and we are afraid of the salt water contamination.

[fol. 373] Q. Now I wonder if you would explain the problems of sand blast with aluminum conductor?

A. The aluminum conductor has a property of oxidizing almost immediately when it is exposed to air, and it forms a protective covering that is very good, but it is rather easily removed. The very reason that it forms the protective covering, usually within 60 seconds when it is exposed to the atmosphere, is the reason we have problems in connectors. But the aluminum oxide that is formed over the aluminum conductor is very easily removed unless there is some type of covering on the conductor, and sand blast which we get from the sand dunes that predominate along our south shore will very easily knock this aluminum oxide off, and it immediately reforms again and in the process will use up some of the material of the conductor. And as this process is accelerated very soon you will have ne conductor left and you will have a conductor failure much sooner than what we would anticipate where our lines are constructed to last 30 or 35 years before they would be replaced.

Q. Have you the same problem with sand blast in copper?

A. No, because the copper conductor does not form the oxide as readily, nor is it as easily removed, and we have lived with copper in the seashore areas for 50, 60 years [fol. 374] and had a lot of experience on how to handle it.

Q. And have you the same corrosion problem due to salt water with copper?

A. It is not as severe.

Q. I see. In your aluminum area, as it is designated on

the map, Mr. Hickson, can you use only aluminum?

A. No. The reason that we developed aluminum for our distribution conductors was because of its economic advantages as far as material was concerned, and when the overall economics became evident, which would include installing it and all the problems with connectors and everything, it became necessary for us to zone those areas where we could use it if the economics indicated that it was a superior substitute to copper.

Q. Is this aluminum area expanding on your system?

A. Yes, it is. The map which was put in evidence as one of our construction standards was just recently revised to include an area on the north shore of the island because we had extensive reconstruction going on there, and the use of aluminum conductor would saye us a considerable amount of money. So that although we had established the zone somewhat further from the shore line initially, our experience had indicated that we could safely move this [fol. 375] conductor further to the shore area, and we are in the process now of further expanding the aluminum zone so that it will include approximately 90 percent of our system. The zoning as it now stands is about 80 percent of the area rezoned where we can use either aluminum or copper, and about 20 percent where we use copper only.

Q. In other words, in the aluminum area you can use

aluminum or copper, but you do use aluminum.

A. We have been using aluminum in this area since about 1953. It has always been the most economic conductor for us.

Q Directing your attention to your overhead distribu-

tion lines, sir, are they covered or are they bare?

A. Our overhead distribution lines are both covered and bare, depending upon the environment in which they are installed.

Q. Can you give us a general breakdown of what percent of your system, or your overhead distribution system is bare and what percent covered? Let me ask it this way, on your aluminum distribution system overhead, what percent is covered?

A. We have zoned an area also for covered conductors on our system, because we are exposed to—we have a

great deal of trees in our area which causes interruptions [fol. 376] to service and which can be minimized if the conductors are covered. This would prevent faults, and we have recently zoned approximately 60 percent of our area where this is mandatory; that all new conductors be covered, and the remaining 40 percent it is optional based on the amount of trees that happen to exist in that area. So I would say as an approximation that about 60 percent of our new conductors are covered:

Q. And these would be aluminum in the area designated as your aluminum area.

A. That's right, and also would apply to the copper area, too. We cover the copper conductors, too, because of this problem with service continuity.

Q. What type of conductor do you use on your underground lines, Mr. Hickson?

A. On our underground lines we predominantly—we are predominantly an overhead company, we do have underground in areas of very high load density, but in our underground construction we use copper conductors insulated cable?

Q. Why is that?

A. When we first went into the aluminum program for distribution, we experimented with underground installa-[fol. 377] tions on street lighting because we were getting a large volume of business that required that the street lights be underground. We had very unsatisfactory operating results with the aluminum conductor for street lighting and, therefore, we discontinued that after about four years experimentation. We relied on our neighboring utility, Con Edison, whose system is mostly underground that carry out experiments as far as the use of aluminum as an economic substitute for underground distribution, and the results of their tests indicated that the problems in the course that would be associated with aluminum would outweigh the material advantages that you have in price between copper and aluminum, and there the net economic result would indicate you should use copper at the present time for underground distribution. So we use copper in our underground distribution.

[fol. 378] Q. How about underground transmission?

A. Same thing applies to underground transmission, the same reasoning.

Q. Copper is used for underground?

A. Copper is used for underground transmission.

Q. What type of conductor do you use for service drop

on your system, Mr. Hickson?

A. Our service drop is one of the components of the distribution system, the portion from the pole to the building, and in the aluminum area we are now using exclusively aluminum triplex service drops.

Q. Will you describe the triplex construction?

A. The Triplex is the ordinary residential service, and we are primarily suppliers of residential customers. It is a three-wire assembly, the neutral wire is usually bare and the two power legs are usually insulated.

Q. What type of service drop do you use in your sea

coast areas, your copper area?

A. We use a copper triplex in those areas, same type of

assembly but the base material is copper.

Q. Is it much of a problem, Mr. Hickson, to switch from aluminum to copper or copper to aluminum in the distribu-

tion area of your system?

A. Our requirements each year include both aluminum [fol. 379] and copper, because we do have a zone where we have to use copper only, and because aluminum has been favorable in the areas where we could use either, we do get a continual price comparison as far as materials are concerned and we are ever on the alert to see if this price comparison would change, but it would require that if the price of copper should approach aluminum that we would be assured that it would be relatively stable for a period of time, because there are other problems such as stocking, inventory, training personnel, the incompatibility of the two in any one area, that you would not flip back and forth from one conductor to another. You would have to be reasonably sure that the economic favoritism would be maintained for a period of time.

Q. Do you anticipate any shift to copper?

- A. There is no indication from the comparisons that we have been keeping that copper will become competitive at the present time.
  - Q. In regard to-

A. Aluminum. We would continue to use aluminum. There is no indication that we would switch back to copper.

Mr. Wertheimer: Thank you. That's all.

[fol. 380] Cross-examination.

### By Mr. Adler:

Q. Mr. Hickson, referring first of all to Government's Exhibit 472, do you have that before you?

A. Yes.

Q. The designation "aluminum area," on each of the two maps, means that this is an area in which aluminum may be used? I believe that was brought out on your direct.

A. Yes. I should say this. This particular map is a construction standard and this is put out for the guidance of the many people that are concerned with the actual building of the lines, and it means that at the present time we are using aluminum in this particular area. It is designated as an aluminum area. If we should want to change back to copper, then we would have to change this construction standard to indicate that—

Q. This is a-

Mr. Wertheimer: Let the witness answer the question.

# By Mr. Adler:

Q. I believe he did finish. This is a zone within which ather copper or aluminum could be used from a technical standpoint!

[fol. 381] A. That's right, and referring to the exhibit here, we are presently using aluminum in that zone and that is why it is made up as an instruction to our people, and if we did change back to copper we would change this construction standard to reflect that.

- Q. With respect to what is here called the aluminum area, and which is an area in which either copper or aluminum could be used——
  - A. Yes.
- Q. You testified, I believe, that you periodically revaluate the requirements of your distribution system?

A. Yes, that is true.

Q. How frequently is that done?

A. Well, it is done every time that our company personally goes out for bids for requirements for conductors, the prices of the conductors both copper and aluminum are made available to us and we plot this in the form of graphs so that we will know the differential and the point at which we should undertake further investigation in preparing programs for a change from one to another.

# [fol. 382] By Mr. Adler: •

Q. I believe my question was how often do you make this reappraisal of your system.

A. We do this every time that our company purchases

any quantities of either. We keep up to date.

Q. Would that be something done every six months?

A. It certainly is done at least every year and usually oftener. I think we try to purchase our requirements on an annual basis. You are not always able to forecast them accurately and you are usually going in for additional purchases in and over your annual requirements. Further than that, if we don't happen to be purchasing material at that time we do know from the rest of the industry where we freely exchange information we would be aware of a price change if it should occur. Even though we were not buying at that particular time.

Q. So that you are making these annual or periodic reevaluations or at other times during the year you are alert

and are aware of prices of cable!

A. Oh, yes.

[fol. 383] Q. Either copper or aluminum?

A. Yes.

Q. Now, in making your determination as to whether, and here we are speaking principally of your covered distribution conductor products, cable, making your determination as to each type of cable to buy during the ensuing period, you have before you first of all the prices of the cable?

A. Yes.

Q. Now, are there other economic factors that are taken into account in determining whether the total economic picture favors one as against the other?

A. Yes. Of course, there is the labor, the installation

which may vary depending upon the areas in which we are going to install the majority of our conductor. There is a differential in cost that would exist in other components of the system such as conductors, and we use copper connections with copper conductors and aluminum connections with aluminum conductors. And you do have other considerations as far as differences in the characteristics of the two metals. Sometimes they are favorable to copper under certain applications and sometimes they are favorable to [fol. 384] aluminum.

Q. You have no rigid rule in your company that in this so-called aluminum area nothing but aluminum overhead distribution cable can be used?

A. At any one time for the purpose of uniformity and the purpose of matching the construction to the material that we have ordered we do have a rule. In other words—

Q. Excuse me. That would be during the particular purchasing period?

A. Period.

Q. But when your next yearly purchasing period commences and you re-evaluate your requirements, then again it is based upon choice?

A. It could be open, yes. But we would be-

Q. Well-

A. Well, all right.

Q. Now, do you find in your overhead system that particular requirements may affect the relative advantages of copper or aluminum? For example, in a situation I believe you refer to the low density as a factor that may affect the type of cable that would be purchased?

A. Yes.

[fol. 385] Q. By that I take it you would get into the heavier conductor—perhaps you better explain what you

mean by that.

A. Generally speaking in overhead construction the heavier the low density or the larger the conductor you use the more favorable it would be toward aluminum. You do have in the light or low density areas, we have a minimum size conductor that can be installed because of its strength and it may be as far as its physical properties are concerned, it may be much in excess of what the electrical requirements would be. Therefore you would have a minimum size just for strength. And in these areas because

aluminum, the property of aluminum is that it is not as strong as copper, we do have to go to an aluminum alloy in order to gain the strength requirement, and we do pay more for the aluminum alloy than you would for an all aluminum conductor, because of the pricing.

Q. And that would bring your economic relationship

there to copper close if not in—

A. It does affect it. In other words, it is not the greater consideration. The more sophisticated the conductor is away from the bare conductor, the less the differential is [fol. 386] between copper and aluminum, because basically the coverings or insulations are the same for either conductor and it means copper has a greater conductivity than aluminum. Its cross-sectional area is smaller and the covering in aluminum has to be greater.

Q. That is one factor that would tend to favor the copper cable in your overhead system?

A. Well, it tends to make the copper more competitive if you will.

Q. Now, in this total economic picture that when you consider the cost of making connections, that would be a factor there?

A. It is a factor. I don't want to attach any more significance to what it is, but this was one of the problems that we had in using aluminum to begin with. Suitable connections were not available at all. You have to be slow in going to use a conductor to make sure you have the associated equipment that goes with it.

Q. And in some situations in your overhead system you have more connections than others, and this would become a greater factor?

A. Yes. I am sure that this is the reason why aluminum [fol. 387] was used on transmission for many, many years because there are few connections involved.

Q. When you say transmissions you are referring to bare ACSR?

A. Yes, in both distribution of power, there are few connections because there are fewer customers fed off of these transmission lines. When you come to distribution even in small houses and conductors are magnified a thousand times, you really have problems on connections in

distribution systems that you do not have on transmission systems because of the mulitiplicity of the connections.

Q. Can we sum up your testimony that this decision with respect to covered distribution conductors is a complex one in which you weigh the multitude of economic factors and reach your final decision as an engineer on the basis of these factors?

A. Yes.

Q. You testified on your direct examination that you are always on the alert for change in economic relationships.

A. Yes, I have.

Q. You must be!

A. Yes.

[fol. 388] Q. You also testified that you didn't anticipate any change in these price relationships, but you have not

-is that a guess on your part?

A. Being responsible for this sort of thing I am rather familiar with the trends. We do keep current on these things, of course, and we know where the thing lies unless, of course, something which I cannot personally see, I wouldn't expect to change in relationship to our using copper in our present, where we are presently using aluminum. That is what I meant by that.

Q. If this change which you have no reason to expect occurred, if the price of the copper cable came down, if for some feason the price of aluminum cable went up, if the other economic factors involved worked out in such a way that copper, that would be advantageous to your company to use a copper covered cable, you would do so!

A. Yes, definitely.

Mr. Adler: Thank you. No further questions.

. The Court: So that performance of the copper and per-

formance of the aluminum is somewhat similar.

[fol. 389] The Witness: Yes, your Honor. It is part of our design objective that these have to be equivalent conductors before we would compare them economically. We do have economic acceptable levels and we may evaluate some superior qualities, but they have to be accepted.

The Court: Your difference between the two is based on

economics rather than performance?

The Witness: All other things being equal, yes.

### Redirect Examination.

## By Mr. Wertheimer:

Q. When you say the price of copper would have to be less than the price of aluminum before you would consider shifting back, do you mean price per pound or price per

foot of equivalent conductivity?

A. I always talk about the comparative prices for equivalent conductivity. You get into this bit on aluminum and copper, that the weights are different, the aluminum for conductivity is probably half the weight of copper, so we are talking always in terms of price per foot of equivalent conductivity.

[fol. 390] Q. Do you presently use any copper in the area described on your map as your aluminum area, for over-

head transmission or distribution?

A. For new construction or reconstruction, no.

Q. In recent years has your aluminum area increased or decreased?

A. Our aluminum area was initially very conservatively select and we are in the process of expanding the zone to take advantage of the better economies, and based upon our tests that we continually conduct, which indicate we can use aluminum in areas where we had originally excluded it.

Q. In any area zoned for aluminum therefore you have

not returned to copper?

A. Yes.

Q. In response to one of Mr. Adler's questions you mentioned generally the greater sophistication of the conductor the less advantageous would be the use of aluminum. Where does the sophistication of insulation make the use of aluminum uneconomical?

A. It is certainly, I have already testified when we come to an underground type of conductor which is insulated and shielded and installed below ground, that we have already come to the conclusion that this level of covering or [fol. 391] insulation, the copper is favorable. Now somewhere between that and the bare conductors where you would reach the break-even point at present price levels of materials, and it would be the particular type and size of conductor and type of covering and application that would determine it. But in general the more additional refine-

ments you add to the bare conductor the closer the two will come together because you are introducing costs which are either similar for both conductors or are perhaps a little greater for aluminum and for equivalent conductors, the aluminum is a larger conductor, and anything you put around it takes more material.

Q. I see. But for your overhead covered conductor the economics still favor aluminum?

A. Yes. For any of the designs that we are using in our company the aluminum still is the economic conductor, no matter how sophisticated it is.

Mr. Wertheimer: Thank you. Mr. Adler: No further questions.

The Court: That is all.

(Witness excused.)

[fol. 392] Mr. Mahaffie: Mr. Walter Probst.

WALTER F. PROBST, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

### By Mr. Mahaffie:

Q. State your full name, Mr. Probst.

A. Walter F. Probst, P-r-o-b-s-t..

Q. What is your occupation, sir?

A. I am president of Essex Wire Corporation.

Q. Where is the Essex Wire Corporation located?

A. The home office is 1601 Wall Street, Fort Wayne, Indiana.

Q. How long, sir, have you been president of the Essex Wire Corporation?

A. April of 1959.

Q. Excuse me?

A. Since April of 1959.

Q. And how long have you been with the Essex Wire Company?

A. It will be 20 years in June.

Q. Mr. Probst, what is the approximate size of the Essex Wire Corporation in terms of annual sales, approximately, sir?

[fol. 393] A. Well, let me say it would be in excess of a hundred million dollars sales per year.

Q. And how many manufacturing plants does the cor-

A. I think it is 32.

Q. Now, Mr. Probst, would you state, please, the manufacturing divisions of the Essex Wire Corporation?

A. We divide our operations into an attempt to arrive at production lines and each of these are separate divisions. We have an automotive division. Do you want some information on the type of products on that?

Q. I will ask you that specifically.

A. The magnet wire division, wire and cable electronic, which is a subdivision of industrial controls; automatic switch division, which is a subdivision of automotive, and plastic extrusions.

Q. All right, sir, would you very briefly state what type

of products is produced by each of these divisions?

A. The automotive division is principally the supplier of automotive wiring, harness and attachments for the automobile industry.

Q. What is an automotive harness?

A. It is a collection of wires assembled with terminals, [fol. 394] connectors, sometimes relays and switches, various attachments and molded parts so that they are ready to install in a vehicle on the assembly line.

Q. It would be fair to say that electrical system of a

motor vehicle?

A. Yes.

Q. Go ahead, please.

A. The magnet wire is just what it says. It makes all types, sizes and types of magnet wire.

Q. Mr. Probst, what is magnetic wire?

A. It is a type of electrical conductor coated with a resin or varnish or epoxy or liquid type coating put on the wire after it is drawn.

Q. What is it used for, sir?

A. It is used to wind motors, coils, transformers, that type of usage.

Q. Would you proceed, please?

A. The wire and cable division is anything in the wire industry that we make other than magnet wire. The electronic division is principally small transformers for home entertainment. Also filters, chokes, small parts. They have a control division which specializes in industrial control, relays, industrial switches and control. And the automotive switch division, part of the automotive division, [fol. 395] specializes in automotive light switches, door switches, turning signals. That type of product.

Our plastic extrusion division is principally shapes and

extrusions in plastics of some kind or other.

Q. Now, sir, with reference to the automotive division, I believe you said that the division manufactures automotive or automobile wiring. May I ask this. Do you manufacture battery cables in that division?

A. Yes.

Q. What kind of conductor metal is used in your automotive wiring and battery cable products?

A. Today it is all copper. One time we tried some aluminum in the battery cable field, but that was given up.

Q. Why did you give that up?

A. Principally it could not meet the test requirements of flexing that the cable gets and the use in a car, and it wouldn't stand up.

Q. It wouldn't stand up under flexing?

A. Right.

Q. Do you use any aluminum in the automobile wiring other than battery cable?

A. No, we do not.

Q. Have you ever used any aluminum? [fol. 396] A. Not that I know of.

Q. And why not, sir?

A. I think the engineers will tell you that it won't take the wear and tear that an automobile or vehicle gives to the wiring in a vehicle. It just won't take the beating, and the flexing that copper will take.

Q. All right, turning to the wire and cable division of the corporation and the magnet wire division, would you state what approximate percentage of ethics total business is accounted for by these two divisions?

- A. Combined, I would say approximately 45 per cent in total volume.
- Q. And the remainder is accounted for by your other divisions that you have described?
  - A. Yes.
- Q. What products are produced by these two divisions in general terms?
  - A. Wire and cable and magnet wire?
    - Q. Yes.
  - A. Well, I have given you the magnet wire.
  - Q. Yes, sir.
- A. Wire and cable covers practically a full range of what we call building wire.

[fol. 396a] Q. Yes.

- A. And cord sets, cordage wire and the aluminum wire described here except for the larger size of ACSR.
- [fol. 397] Q. Well, is there a general term that can be used to describe the wires other than building wires and cordage and cord sets?
- A. If there were a term, I suppose it would be utility cable.
  - Q. Utility cable?
  - A. Yes.
- Q. So it would be fair to say that the wire and cable division manufacturer's building wire, cord sets and utility cable.
  - A. Yes.
- Q. Is magnet wire—is the magnet wire division, does that manufacture magnet—
  - A. (Interrupting) Only.
- Q. All right, sir. Now first of all, Mr. Probst, what is building wire?
- A. Well, it is just what it says, I guess, any of the type of wire that is used in building construction, wiring houses, industrial buildings, and usually in terms of 600 volts or less.
  - Q. Used indoors? .
  - A. Indoors.
- Q. Well, let's get at it this way, what products are included within the utility cable grouping?
- A. Well, we stop at about 15,000 volt capacity, carrying [fol. 398] capacity cable in the covered, and we make

A.C.S.R. in small quantities in the smaller sizes. We make covered aluminum and make service drop, service entrance, both in copper and aluminum.

Q. How about underground cables?

A. Yes.

Q. Now what conductor metal is used in the cordage and cord sets manufactured by you?

A. Copper.

Q. Do you produce any cord sets that use aluminum as a conductor metal?

A. No.

Q. Why not?

- A. I don't know if it has ever been tried. I think we produce what the customer wants, and the Customer Engineering Departments have never specified it.
- Q. Do you expect there would be any demand for aluminum in the field of cord sets?
- A. I don't think so. Again it is a mechanical problem. You have heard before here as to what stress and strain aluminum will take as against copper.
- Q. Would it be fair to say it is the same type of mechanical problems you described when you were talking about automobile wire?

A. That's right.

[fol. 399] Q. What conductor metal is used in the building wire manufactured by you?

A. We make only copper building wire.

- Q. Have you ever produced aluminum conductor building wire!
  - A. Not that I recall.

Q. And again, sir, why not?

- A. Well, there are so many problems connected with using it, both in installation and teaching people to use it, and the question of its durability, that I don't believe it will in my personal opinion ever be a substitute for copper. There is some aluminum building wire made by some other companies.
- Q. All right, sir. In Essex's line of magnet wire, do you produce aluminum magnet wire?
  - A. Very, very small quantities.
  - Q. And again, sir, may I ask why not?

A. I would say the engineers just haven't been able to design it into the product economically.

Q. Do you expect there will be an increasing demand for

aluminum magnet wire?

· A. Personally I don't think so.

Q. All right, sir. In the field of utility cable which you have described as A.C.S.R., covered wire, service drap—I believe you included service entrance.

[fol. 400] A. Yes.

Q. What conductor metal do you use, sir?

A. Mostly aluminum in the overhead type; in the service drop the greater percentage is aluminum; the service entrance, the trend is to more and more aluminum.

Q. Has there been a trend in this direction in these prod-

ucts in recent years?

A. Very definitely.

Q. Trend in favor of aluminum?

A. In favor of aluminum, yes.

Q. Mr. Probst, with respect to the total market for the products of Essex's wire and cable division and Essex's magnet wire division would you say aluminum and copper compete with other as conductor metals?

A. No, I wouldn't use that term. Where aluminum at present price levels is feasible engineerwise and mechan-

icalwise it just takes over, it is cheaper to use.

Q. What do you mean by "It just takes over"?

A. Well, it is a substitute for copper because of its price advantages.

. Q. Well, in a particular application does it substitute for part of the copper used in that application or all of the copper?

A. Usually it takes over all and substitutes for all of it. [fol. 401]—Q. What would you say is the field in which aluminum conductor is and can be successfully used today in the electrical wire and cable?

A. I think you heard it here before from some of the technical witnesses who are better qualified than I am, but I would say in overhead lines for the utility use where they have no other problems of weather, etc., they have taken over almost exclusively, and in service drop it is rapidly taking over because of its economics, and I think it is doing the same thing in service entrance.

Q. Would you say there is a comparable field in which copper predominates as an electrical conductor?

A. Well, it dominates in the entire building wire industry

as such, dominates in the underground cable.

Q. How about magnet wire?

A. It dominates in the magnet wire field today?

Q. Do you make any aluminum underground cable?

A. Not that I know of.

Q. Now in your experience, Mr. Probst, when aluminum has been introduced into a new application in electrical conductor wire and cable applications and has been able to perform satisfactorily, what has been the result?

A. It is substituted for the copper usage if it can meet [fol. 402] all the requirements based on today's price

levels.

Q. Completely?.

A. Usually completely.

Q. Now Mr. Probst, since 1959 has there been any change in the volume of Essex's production in sales of A.C.S.R.?

A. Yes, there has been.

Q. Could you state approximately what the change has been?

A. Well, in 1958 I would say that our total aluminum production was probably about two and a half percent of our wire and cable.

Q. This is in 1958?

Å. 1958.

Q. Yes, sir.

A. I would say by 1960 that had dropped to less than one percent.

Q. And was there a decline in one product that accounted for the drop!

A. In the heavier size of A.C.S.R., bare, that was our principal decline.

Q. Why is your production, of A.C.S.R. declining?

A. We couldn't make any money selling it.

Q. Does the Essex Wire and Cable Company produce a either copper or aluminum rod?

[fol: 403] A. We roll our own rod from rod bars.

Q. Is this copper?

A. Yes.

Q. Do you produce aluminum rod?

A. No, we do not.

Q. Do you have facilities for production of aluminum rod?

A. We have a Properzi machine.

Q. Would you state what that is?

A. It is an aluminum rod rolling mill from ingot, from aluminum ingot to rod.

Q. Is that a process which uses the casting method or

rolling method?

A. It is a casting method.

Q. Now you have this machine, you do not use it, why not?

A. Two reasons, the time we went out of the heavy A.C.S.R. business we had a fire in our Properzi mill and we closed it down, and knowing we were not going to have the demand for the volume we decided it wasn't economical to put it back in operation, so we put it in mothballs.

Q. Really a question of volume?

A. Yes.

Q. Growing out of the drop in A.C.S.R. preceding the [fol. 404] fire?

A. It was almost at the same time. I was trying to find the date the other day, and as I remember it, we had made the decision to go out of A.C.S.R. at the time the fire took place, and it was the early part of 1959.

Q. Independently of the fire.

A. Right.

Mr. Mahaffie: That's all I have.

[fol- 405] Cross-examination.

# By Mr. Bergson:

Q. Mr. Probst, you said you went out of the larger sizes of ACSR in early 1959?

A. We actually stopped production about March 1 of 1959.

Q. Did the ALCOA-Rome acquisition have anything to do with that decision?

A. No. sir.

Q. Isn't it a fact that at the time you made the decision—where is the plant in which you made the ACSR located?

A. We were making that in Birmingham, Alabama.

Q. Do you have other plants for making wire and cable!

A. Yes.

Q. Are there more than one?

A. There is more than one, yes.

Q. Where?

- A. Marion, Indiana, Jonesboro, Indiana, Sycamore, Illinois, Tiffin, Ohio.
- Q. The larger sizes of ACSR, were they made exclusively in Birmingham?

A. Yes.

Q. At the time you made the decision to close the ACSR production in Birmingham, did you close the Birmingham [fol. 406] Plant?

A. Yes, we did.

Q. At that time were there any other factors that ertered into your decision other than the fact that you gave that you weren't making as much money as you would like.

A. Well, yes, there were. We had quite a gamit of products at Birmingham and we weren't sure that that may not have contributed to our inability to make it pay out, and we were having a lot of labor troubles at Birmingham besides.

- Q. You were having labor troubles and that contributed to it?
  - A. I think it was a lot of circumstances contributed to it.
- Q. One of the circumstances was not the Rome-ALCOA acquisition?

A. That's right.

Q. Now, after you closed the Birmingham plant you continued to make the smaller sizes of ACSR in one of your plants, and you also made covered or insulated products of both aluminum and copper?

A. Right.

Q. And in your production of those covered products did [fol. 407] you have separate machines for drawing and stranding and covering of aluminum and copper?

A. At Birmingham we had separate drawing equipment; the insulating and covering equipment was not separate.

Q. But in your Tiffin plant, for example?

A. In Tiffin we ran both on the same equipment.

Q. You run both aluminum and copper on the same machine?

A. Yes.

Q. You draw on the same machine?

A. Yes.

Q. You strand on the same machines?

A. Right.

Q. You insulate on the same machines?

A. Right.

- Q. If you had an order for insulated aluminum conductor you insulated you do it on the one machine, if you have an order for insulated copper conductor you use the same machine?
  - A. Not five minutes later, but that is basically right, yes,
- Q. Now, I noticed Mr. Mahaffie asked you about your production in ACSR and asked you whether that had gone down in 1950, but I don't think he asked you about what [fol. 408] happened to your insulated and covered aluminum conductor products since 1958. What was your production in 1958 if you have the figures?

A. Of covered?

Q. Of covered.

A. 3,116,000 pounds.

Q. What was it in 1960?

A. 3,191,000.

Q. So that has gone up?

A. Yes, sir.

Q. Now, you stated on your direct examination that you shut down your Properzi machine coincidentally with the closing of the Birmingham Plant, I guess it was?

A. About the same time.

Q. And also coincidentally with the time of the fire, or not so coincidentally with the time of the fire, prior to the time you shut down the Properzi machine what product did you buy for use in the Properzi machine.

A. Bought aluminum pig, electric grade.

Q. Who did you buy it from?

A. We bought a lot of aluminum from Aluminum, which is ALCAN, Aluminum Company of Canada.

Q. Would you say you bought the majority of it from them?

[fol. 409] A. I think for a good deal of the time we had a the Properzi running it was ALCAN pig.

Q. Since you shut the machine down you buy aluminum

rod?

A. Right.

Q. Who is your principal supplier of aluminum rod?

A. South Wire, Georgia. . .

Q. Let me show you Government's Exhibit 444, which is an exhibit, entitled "Sales by Domestic Primary Aluminum—Producers of E.C. aluminum pig and ingot and E.C. aluminum rod and sale to non-integrated producers of aluminum conductor wire and cable and to other firms," I ask you if you see on this chart prior to the time you shut down the Properzi machine the name of your principal supplier of pig and ingot, which you testified was Aluminum, Ltd.?

A. I don't see it on the exhibit.

Q. And since you closed the Properzi in early 1959 you bought your rod from Southwire Company?

A. Right.

Q. Do you see Southwire's name on the suppliers of rod?

A. Not on this exhibit.

Mr. Melchior: Counsel, was that GX-444?

Mr. Bergson: Yes, sir.

### By Mr. Bergson:

Q. Now, you testified that you made service drop, service. [fol. 410] entrance cable with aluminum and copper as the conductor?

A. Right.

Q. And are you in a position to meet any demand for that product in whatever conductor the demand is made?

A. So far we have been able to.

Q. And if a customer comes to you and orders so many feet of service drop cable in aluminum you furnish it to him in aluminum; if he asks for it in copper, you furnish it to him in copper and it is all made on the same machine?

A. Right.

Q. And the same is true with service entrance cable?

A. Right.

Q. Mr. Probst, were you subpoenaed to appear here as a witness?

A. Yes, I was.

Q. Were you served with a subpoena duces tecum?

A. Yes, I was.

- Q. Do you have a copy of that subpoena duces tecum here?
  - A. Yes.

Q. May I see it?

(Paper handed to counsel by witness.)

[fol. 411] Q. I notice that in this subpoena duces tecum let me read it with you.

A. I have a photostat of that attachment.

Q. You were asked to bring with you all the written communications between the Essex Wire Company and others since January 1, 1957, referring or relating in whole or in part to difficulties experienced by the Essex Wire Company in securing an adequate profit return by the reason of the relationship between the prices of conductor metal purchased by the Essex Metal Company and the prices of finished wire and cable products excluding communications to or from the United States Department of Justice; did you bring any such communications with you?

A. I did not.

Q. Were there any such communications?

A. I wasn't able to find any.

Q. Do you recall whether there ever were such communications?

. A. Not that I know of.

- Q. Now, you were also asked to bring all written communications between the Essex Wire Company and others since January 1, 1955, referring or relating in whole or in part to difficulties experienced by the Essex Wire Comfol. 412] pany in securing adequate supplies of aluminum to be used in the production of aluminum wire and cable products; did you bring with you any such communications?
  - A. No, I did not.

Q. Why not?

A. Couldn't find any.

Q. Do you know whether there were any?

A. Not of my own knowledge, I don't know of any.

Q. Now, Mr. Probst, as a producer of wire and cable

products I am sure you were aware of the fact that in 1956 Kaiser Aluminum Chemical Company—1957, acquired the United States Rubber Company's Bristol plant?

A. That's right.

Q. Did that acquisition hurt you in your business?

A. No.

Q. And you are aware of the fact that in the same year Olin Mathieson acquired Southern Electrical Company?

A. Yes, sir.

Q. Did that acquisition hurt you in your business?

A. No.

Q. And of course you are aware of the fact that in April of 1959 ALCOA acquired Rome Cable?

A. Yes, sir.

[fol. 413] Q. Did that acquisition hurt you in your business?

A. No.

Q. Did all three acquisitions put together hurt you in your business?

A. I don't believe so.

Q. Since you have been asked about reasonable expectations here, let me ask you this, do you have any reasonable expectation that these acquisitions will hurt you in the future?

A. No, I do not.

Mr. Bergson: Thank you. No further questions.

Redirect examination.

#### By Mr. Mahaffie:

Q. Mr. Probst, the three acquisitions which Mr. Bergson just mentioned to you, in each case the acquiring corporation was a producer of aluminum, was it not, sir?

A. Yes.

Q. Approximately what percentage of the total business of Essex Wire Corporation is accounted for by aluminum?

A. Of the total of Essex's business?

.Q. Yes, total business of the corporation?

A. Less than half of one per cent.

[fok 414] Q. Now, when the corporation was producing the larger sizes of ACSR and other products at the Birm-

ingham Plant did you draw both aluminum and copper on the same machines?

A. At Birmingham we did not.

Q. Why did you not?

A. I think costwise with the volume we had, it was better to keep it on separate equipment.

Q. If the volume at the Tiffin Plant today was the same volume in aluminum as the volume that the Birmingham Plant had, would you be drawing aluminum and copper on the same machine?

A. One machine wouldn't do it, if you had two it would .

be better to separate them.

- Q. What kind or grade or type of aluminum rod do you buy, Mr. Probst?
  - A. We buy electric grade aluminum rod.
  - Q. That is referred to as E. C. grade!

A. Right.

Q. Now, one further question, sir. Now, with respect to the documents which were called for in paragraphs 2 and 3 of this subpoena, you stated that you, to your knowledge, did not know of any, I believe?

A. That's right.

Q. Does the Essex Wire Company have what is some-[fol. 415] times called a record reduction policy?

A. Yes, we have.

Q. What is that policy, roughly speaking?

A. Referring to correspondence we have a corporate policy of discarding all the correspondence other than the current year and the previous year.

Q. One further question, sir. Mr. Probst, I am showing you a copy of Government's Exhibit 444, this is the same document which Mr. Bergson showed you on cross-examination. I wonder, sir, if you would read the title of the chart?

A. Sales by Domestic Frimary Aluminum Producers of E. C. aluminum pig and ingot and E. C. aluminum rod and sale to non-integrated producers of aluminum conductor wire and cable and to other firms.

Q. Thank you, sir. Now, is the South Wire Corporation a producer, is the South Wire Corporation a primary aluminum producer?

A. No.

Q. Is ALCAN or Aluminum a domestic primary aluminum producer?

A. No, they are not.

Mr. Mahaffie: No further questions.

Mr. Bergson: May I have a few on recross-examination? [fol. 416] The Court: Yes.

#### Recross-examination.

# By Mr. Bergson:

Q. Mr. Probst, you said that one-half of one per cent of your total business was in aluminum conductor?

A. He asked me aluminum sales in relation to total Essex

sales.

Q. Yes. Let's relate it to the wire and cable business, part of the business, the wire and cable division, which I think you said accounted for 45 per cent of the sales of the company, and then let's further relate it to the product category that you and Mr. Mahaffie developed as utility sales, utility cable sales, I think you called it.

A. I don't think I could give you even a rough guess on

that, I don't have the figures with me.

Q. Well, let's see. You had 3,191,000-

A. (Interrupting) Pounds.

Q. 3,191,000 pounds in covered aluminum conductor in 1960?

A. Right.

Q. And you said that practically all of your aluminum sales were in the utility cable category?

A. Right.

[fol. 417]. Q. And you also said that in the overhead field aluminum seemed to be taking over quite substantially?

A. Right.

Q. So would it be a moderate estimate or would it be an over estimate or would it be an under estimate to say that in the utility cable field your sales of aluminum asca percentage of your total sales as conductor in the utility cable field was better than 50 per cent?

A. I doubt if it is that large percentagewise, we self a lot

of copper to the utility industry.

Q. You do?

A. Yes.

Q. Well, would it be-do you have any area-

A. (Interrupting) If I had to make a wild guess, I would guess it would be 25 to 30 per cent.

Q. A little bit more than half of one per cent or one

per cent?

A. It depends on what you relate it to.

Mr. Bergson: Thank you. That's all,

Mr. Mahaffie: The Government has no further questions.

The Court: That's all.

(Witness excused.)

[fol. 418] Edward J. Simmons, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

#### Direct examination.

# By Mr. Melchior:

Q. State your name and place of employment.

A. Edward J. Simmons, I am vice-president in Charge of Marketing of the Triangle Conduit and Cable Company, New Brunswick, New Jersey.

Q. How iong have you held this position?

A. Approximately one year.

Q. What was your position before this?

A. Director of Sales of the Electrical Division.

Q. About how long have you been connected with Triangle Conduit?

A. As of this morning, exactly 25 years.

The Court: A fine way to celebrate your anniversary. Just in honor that we will take a five-minute recess.

(Whereupon a short recess was taken, after which the hearing was resumed.)

[fol. 419] By Mr. Melchior:

Q. Mr. Simmons, would you state generally the type of business activity Triangle Conduit and Cable Company is engaged in?

A. We are manufacturers of electrical wires, cables and

conduits, copper tubing, plastic pipe and fiber pipe.

Q. What are your approximate annual sales of these products?

A. Approximately 60 million dollars.

Q. What are your approximate assets?

A. Approximately 30 million dollars.

Q. Now, directing your attention to the conductor wire and cable products that your company manufactures, would you state generally the type of copper, would you state generally the type of wire and cable products that you do manufacture!

A. We manufacture primarily products which are known as building wire products, power and control cables and lighting cables.

Q. Now, are these generally made from copper or aluminum or both?

A. We are presently manufacturing only copper.

Q. Now, directing your attention to the conduit which [fol. 420] you manufacture, would you state precisely what conduit is?

• A. Conduit is an electrical raceway system made out of either rigid steel, aluminum or plastic or fiber to carry wires to the distribution system.

Q. What type of wires?

A. Building wires primarily.

.Q. You mean conductor wires?

A. Conductor wires.

Q. Now, directing your attention to conduit, would you state briefly the type of conduit your company manufactures?

A. Well, I am repeating. Rigid and thin wall steel conduit, aluminum rigid conduit, fiber conduit and plastic conduit.

Q. Do you manufacture rigid and thin wall steel conduit?

A. Yes, we do.

Q. And what is the raw material that you purchase in

order to manufacture thin wall steel?

A. We buy our pipe from Wheeling Steel Company and our scelp from Weirton Steel Company for our thin wall conduit.

Q. Do you manufacture aluminum conduit? [fol. 421] A. No, we do not.

Q. Do you sell rigid aluminum conduit?

A. Yes, we do.

- Q. What is your source of rigid aluminum conduit if you do not manufacture it?
  - A. We purchase on contractual basis from Kaiser.

Q. Would you identify Kaiser for the record?

A. Kaiser Aluminum and Chemical Company or Kaiser Aluminum Company.

Q. What do you purchase from Kaiser!

A. We purchase a complete fabricated product which they furnish in our name.

Q. And then you resell it?

A. Yes.

Q. So you are not a manufacturer of aluminum conduit?

A. That's right.

Q. You are a seller of aluminum conduit?

A. Yes.

Q. Do you manufacture and sell plastic and fiber conduit?

A. Yes, we do. .

[fol. 422] Q. Now, in a general way, Mr. Simmons, would you distinguish for me and point out the differences, if any, between rigid steel conduit and rigid aluminum conduit, from a use standpoint.

A. Well, of course, claims are made that they both can be used for the same applications. There are of course, differences of opinion as to the quality of rigid steel as against rigid aluminum, and there are some recognized differences in each system.

Q. Well, now, in your sales program or your advertising program do you point out the advantages and disadvantages of one of these? For example, what advantages would you point out in connection with steel conduit?

A. It has greater mechanical protection. It has a proven history. Over twenty-five, thirty years on installations. It presents less problems as far as fittings are concerned.

Depending upon its type of manufacture. It has better corrosion qualities under certain conditions as against the aluminum installation.

Q. Now, you mentioned some connection problems.

A. Yes.

[fol. 423] Q. Would you go into a little more detail on that?

A. Of course, this is strictly a technical piece of the business, but it has been found by qualified contractors that because of the nature of the metal—

Mr. Bergson: I don't like to interrupt, your Honor, but it seems to me he is testifying as to hearsay now:

The Court: Well, yes. I really don't-

. Mr. Bergson: I really don't care.

The Court: I was going to say that I am not certain that this case turns on this kind of testimony. He just mentioned that—overruled, I will take it.

Q. Mr. Simmons, in attempting to sell steel conduit, and you have been in the business for twenty-five years you said—

A. Yes.

Q. And you have been in the sales end for most of that time?

A. That's right.

Q. You have an opportunity to talk to your various cus-[fol. 424] tomers and prospective customers?

A. That's right.

Q. And you have secured their comments from time to time and their complaints?

A. That's right.

- Q. With this as a background, would you state to me what you consider to be and what you use as your sales talk, shall we say, with respect to aluminum conduit, what advantage does aluminum conduit, or what disadvantage does aluminum conduit have over steel conduit?
- A. Well, I would have to say our sales policy hasn't been to go into promoting the sale of aluminum conduit, but as and of itself there are claims made as far as aluminum conduit is concerned, it is lighter in weight, produces lower installation costs, it is easier to cut. I believe that would be the major asset.

Q. Are there disadvantages in connection with the use of

aluminum conduit?

A. From what we have found out in the market, there are. It is harder to pull wires through aluminum conduit than it is through the steel conduit. It is claimed that it [fol. 425] presents bending problems because of the temper of the aluminum. It is a delicate metal. The threading is damaged in transit. Characteristics such as that have been publicized.

Q. Now, I believe you testified that you also manufacture

plastic and fiber conduit; is that correct?

A. That's right.

Q. Since you are in the sales end of this business, do you feel it is desirable to have a relatively good line of conduit products to sell?

A. Yes. We have established a policy of trying to service our customers with the widest range of products that we

possibly can.

[fol. 426] Q. Now you feel this helps you in your sales effort to have three generally different types of conduit?

A. Yes.

Q. One made of steel, one made from aluminum and the other from plastic.

A. That's right.

• Q. I believe you stated that your company manufactured copper wire and cable. What is the raw material used by your company in manufacturing wire and cable?

A. Copper.

Q. Copper. In what form do you buy this copper?

A. We buy copper wire, bar and roll it into rod.

Q. You roll it into rod?

- A. We roll it into rod, from which we draw it into conductor size.
  - Q. And then do you insulate it?

A. And insulate it.

Q. Now who are your suppliers of copper wire bar, your major suppliers?

A. To name a couple, I don't know them all, with the Phelps-Dodge Copper Products.

Q. Would you identify that company?

A. That is Phelps-Dodge.

Q. Is this company a producer of primary eopper?

A. They are a basic mining company. Kennecott.

[fol. 427] Q. Would you identify them by their full name?

A. I don't know their full name except as Kennecott. They are a basic producer of copper. And A. S. and R., American Smelting and Refining Company, among others.

Q. You stated that these were your primary suppliers!

A. To my knowledge.

Q. And I believe you stated earlier-

A. So as not to offend anybody I better include American Metals Climax.

Q. Do you know whether they are a primary producer of copper?

A. They are.

Q. I believe you stated that your supplier of aluminum conduit was Kaiser.

A. That's right.

Q. The sole supplier?

A. That's right.

Q. Now would you tell me generally, Mr. Simmons, what type of customer, what category of customer you sell your copper wire and copper products to?

A. We maintain what we term a one-hundred percent distributor policy. We sell primarily to electrical whole-

salers.

Q. Do you sell to any national chains of electrical whole-sale houses?

[fol. 428] A. We do. One.

Q. Now would you identify the type of customer or customer category that you sell your aluminum conduit to?

A. To the exact same type of distribution.

Q. Do you sell any of these products directly to the user?

A. Only on rare occasions. Where we would sell to a utility whose practice it is to purchase direct, and only direct from the manufacturer.

Q. Now would you state for the record, Mr. Simmons, who you consider to be your most significant competitors in the field of copper wire and cable, that you know?

A. Without giving any rank, Phelps-Dodge Wire and Cable; General Cable; Anaconda Wire and Cable; Paronite Wire and Cable; Crescent Insulator; Hatfield Wire and Cable. There are others.

Q. Are any of those-strike that please. Now would you

state for the record those companies who are your competitors in the field of aluminum conduit?

A. Kaiser-

Q. This is the same Kaiser Aluminum and Chemical Company from whom you buy your aluminum conduit?

A. That's right. ALCOA. Reynolds. Harvey.

Q. Would you identify that company a little more?

A. Not knowing its full name, it is Harvey Aluminum [fol. 429] Company, somewhere out on the West Coast. To continue, H.K. Porter. Clifton, a division of General Cable. Walker Brothers. Pittsburgh Standard Conduit Company. I couldn't name any more at this particular time.

Q. And all of these companies you consider to be your competitors in the field of aluminum conduit?

A. That's right.

Q. Do you know whether any of these companies are merely resellers of aluminum conduit such as yourself?

A. I know that several of them are on the same contractual basis that we are with Kaiser. I can't say definitely what each company might have in its own operation.

Q. In other words, these companies purchase conduit and resell it.

A. Yes.

Q. They do not manufacture and fabricate A.

A. No.

Q. Can you identify those that you mentioned who merely buy. Would you like to have the list read back?

A. Clifton for one buys from Kaiser. I would only be guessing as to some of the others. I wouldn't want to make a definite statement, as to their source of supply.

[fol. 430] Q. My question is not directed to their source of supply. My question is directed to which of those that you know purchase aluminum conduit for resale rather than fabricate it themselves.

A. To my knowledge all the companies that I named there, outside of the basic aluminum producers, are purchasers of fabricated conduit.

Q. Walker Brothers you think purchases for resale?

A. Yes, sir.

Q. Rather than for fabrication?

A. Yes.

Q. H. K. Porter?

A. Yes.

Q. They purchase for resale other than fabrication?

A. Yes.

Q. Did you mention Wheatland?

A. Wheatland, yes.

Q. And they purchase for resale?

A. That's right.

Q. How about Clifton?

A. They purchase for resale.

Q. They purchase for resale?

A. That's right.

Q. They do not fabricate to your knowledge?

A. No. sir.

[fol. 431] Q. How about Pittsburgh Steel Conduit?

A. To my knowledge they purchase for resale. I could not make a definite statement of it. I don't know whether they have changed their setup.

Q. Did you mention Channel Master?

A. No, I didn't. I think they are producers of aluminum conduit.

Q. They are a producer?

A. That's right.

Q. By a producer do you mean they fabricate the aluminum conduit from aluminum pipe.

A. They are extrusion people. They extrude lots of shapes and forms of aluminum product, including rigid aluminum conduit.

Q. They extrude?

A. That's right.

Q. Rigid aluminum conduit?

A. Rigid aiuminum conduit.

Q. Now Mr. Simmons, where does your company sell its wire and cable products, from a geographical standpoint?

A. We have a national distribution policy.

Q. You sell throughout the nation?

A. That's right.

Q. Now how do you sell your aluminum conduit from a geographical standpoint?

[fol. 432] A. On the same basis, on a national basis.

Q. Do you sell to the West Coast?

A. Yes, we do.

Q. Do you sell very much?

A. I couldn't give you any definite percentage of our business that we attribute to the West Coast. I would say since our, in relation to our overall conduit business, it is not substantial.

Q. Could you give me in the round figures the dollar

figure or poundage!

A. I really don't have those figures available.

Q. Now I believe you said, Mr. Simmons, that your company presently draws and insulates their own copper wire and cable; is that right?

A. That's right, sir.

Q. Has your company ever fabricated aluminum wire and cable?

A. Yes, we have.

Q. You have?

A. Yes, we have.

Q. When, about what period of time did you commence

fabricating aluminum wire and cable?

- A. I don't know specifically when we started. It was a matter of necessity for a period during and after the War, when copper was not available. But since that short-[fol. 433] age of copper disappeared we went back to manufacturing copper cable.
- Q. You say it was some time following World War II that you began manufacturing aluminum wire and cable?

A. That's right.

Q. Can you give me an idea as to about how many pounds you sold in any of those years?

A. I presume I can refer to-

- Q. Yes, you may refer to some notes if necessary to refresh your recollection.
- A. In pounds specifically based on this chart which starts in 1955.
- Q. May I interrupt you for a minute, Mr. Simmons? This chart that you are referring to, did you prepare this chart yourself or was it prepared under your supervision?

A. It was prepared under my supervision by our cost production people.

Q. And it is drawn from company records?

A. That is right, sir. And they are available. In 1955 we produced a 217,000 pounds; in '56, 368,000 pounds; in

1957, 345,000 pounds; in 1958, 60,000 pounds; in '59, 22,000 pounds; in '60, 2,000 pounds; and in '61, nothing.

Q. In other words, you are no longer in the aluminum

[fol. 434] wire and cable business.

A. That is correct.

Q. Now would you explain to the Court why, if you can, you are no longer in that business?

A. The company decision was arrived at that we would not produce or sell aluminum wire and cable since we could not get a profit on the products that we were manufacturing.

- Q. Now when you say that you could not make a profit, do I understand that the price at which you sold it did not fully compensate you for the effort you expended in addition to the cost of the raw materials?
  - A. That is correct.
  - Q. Is that right?
- A. That is correct.
- Q. Can you tell me generally what the market price of aluminum wire and cable was over this period insofar as a trend may have been concerned? Did the market price of the fabricated aluminum wire and cable products that you manufactured and sold remain stable, rise or decline?

A. Since we are on a declining trend here, my statement would be that the market price of fabricated aluminum products declined as a result of which the profits diminished and disappeared.

[fol. 435] <sup>5</sup>Q. I see. Now, looking to the other end of the transaction, what was the raw material that you purchased in order to fabricate the aluminum wire and cable?

- A. For a time we purchased aluminum rod, and then drew it down to conductor size. We later on discarded this policy and we purchased the conductor size in the aluminum conductor size.
- Q. Well, now, when did you first buy rod in order to fabricate it into aluminum wire and cable, about what time?
- A. Well, I could only relate it to our going into the aluminum wire and cable business, and that was the process in effect at that time.
  - Q. And was that in the early fifties?
  - A. I would presume so, yes.
  - Q. Now, during the period you were buying aluminum

rod and fabricating it into aluminum wire and cable, can you tell me if you recall whether there was any general price trend insofar as the aluminum rod was concerned, did the price remain fairly stable or did that drop along with the price of wire and cable!

A. I couldn't give you a direct answer on that.

[fol. 436] Q. You don't recall?

A. No.

Q. You did say that your profit margins were lowered as the years went by between the early fifties and 1960 when you went out of business?

A. That's right.

Q. But you don't recall what the price level was on it as respects the aluminum rod?

A. Being in the sales end, I had no reason to be fully

conversant with raw material purchases.

Q. But you do know that the market price at which you sold aluminum wire and cable declined over this period?

Mr. Bergson: I have been letting counsel lead the witness.

The Court: You are doing pretty good at testifying.

Mr. Bergson: —down the line, because I didn't think it mattered.

The Court: Yes. You are testifying, counsel. Mr. Melchior: I will withdraw the question.

Q. Now I believe, Mr. Simmons, you read the figures [fol. 437] of your shipments for the years 1955 to 1960, and I note that in the year 1957 you shipped approximately 355,000 pounds of aluminum wire and cable.

A. 345,000.

Q. I beg your pardon, 345,000, and in the year 1958 only 60,000 pounds; now, this was a very sharp drop. Is there any explanation for this drop that you can recall?

A. I can only state that an evaluation of our position in the product must have taken place between 1957 and 1958 to the point where it was decided that in the company interest it was no longer profitable for us to try to participate in the aluminum market we were in prior to that time.

Q. I see. Now, Mr. Simmons, I believe you stated that you purchased aluminum conduit from Kaiser for resale.

A. That is correct.

- Q. You do not manufacture aluminum conduit?
- A. That is correct.
- Q. And you do not fabricate aluminum conduit?
  - A. That is correct.
- Q. Did your company ever manufacture or fabricate [fol. 438] aluminum conduit?
  - A. No, we did not.
- Q. Did your company ever give any consideration to manufacturing or fabricating aluminum conduit?
  - A. Yes, it did.
  - Q. What consideration did you give to that question?
- A. When we saw aluminum coming into the conduit market, we naturally explored the possibilities of producing it as part of our own product line. We made cost studies based on buying aluminum tube from either the basic producing people or through extrusion people to see whether or not we could produce it at a satisfactory cost level, to enable us to sell it as part of our line.
- Q. And what was the conclusion that your company reached?
- A. Based on our costs and the cost of either the tube from a producer or an extrusion company, the selling price of aluminum conduit was such that we could not produce it at a profit.
  - Q. Now, you do purchase it for resale?
  - A. That is correct.
- [fol. 439] Q. Do you find this to be a profitable line at present?
  - A. A narrow profitable line.
- Q. Is there any reason why you carry this product other than purely for the narrow profit that you get from it?
- A. Strictly as an accommodation item for our customers whom we, as I said before, try to service with what they want when they want it.
- Q. In other words, your customers on some occasions would like to purchase from you—
- A. Combination truckloads of rigid steel and aluminum conduit.
- Q. I see. Do some of your wire and cable customers desire to purchase aluminum conduit along with the wire and cable?
  - A. Aluminum conduit along with copper wire and cable?

Q. Yes.

A. We have the same customers buying the same type of products, or buying the line of products from us.

Q. And having this line of conduit is

A. Part of our product line.

[fol. 440] Q. It is more or less of a sales inducement also to your customers?

The Court: Well--

Q. I will strike the question. Now, how long have you been purchasing aluminum conduit and reselling it, approximately?

A. The latter part of 1960.

Q. The latter part of 1960 to the present time?

A. That's right.

- Q. Now, during this period have you reported your sales of aluminum conduit to any trade association of which you are a member?
- A. We submitted one semi-annual report to the National Electrical Manufacturers Association for the first half of 1961.
  - Q. For the first half of 1961?

A. That is right.

Q. Do you recall approximately the data that you forwarded to them or the information you gave them as to your sales?

A. In dollars!

Q. In the manner in which you reported it to them, whatever that might be.

As Yes, but I would prefer not to divulge the figure if I [fol. 441] don't have to, your Honor.

Q. Let's ask it this way, I am not asking for the precise figure, I understand your reluctance in giving that. Would you be able to give it to us as a round figure or under or over a certain amount?

A. I think I can correlate it to this extent, that based on our figure as to the overall industry figure that was reported for that period of time to NEMA we were probably in the 2 percent area.

Q. Would you explain that statement?

A. Our dollar sales as extracted from the total dollar sales of aluminum conduit reported to NEMA, reported for the first six months of 1961, was in the area of 2 percent of the reporting companies, less than 2 percent of the total

business reported by the companies submitting their figures to NEMA.

Q. Do I understand your answer to be that the sales figure you reported to NEMA constituted less than 2 percent of the NEMA reported total for that period?

A: That's right.

Q. Now, did you report any data to NEMA of this nature in 1960?

[fol. 442] A. No, since we only went into the business in November of 1960 there was no report submitted for that year. In addition to that, I don't think there was a rigid aluminum conduit section established in NEMA at that time to which we would submit our figures.

Q. Now, what time was this?

A. During 1960.

Q. You don't think there was a NEMA section at that time?

A. No.

Q. Were you a member of it?

A. No, we were not.

Q. Do you know as a fact whether there was or was not a NEMA section?

A. I do not know it as a fact.

Q. Now, Mr. Simmons, do you consign any of your wire and cable or conduit products?

A. Yes, we do consign wire and cable; we also consign a

small amount of aluminum conduit.

Q. Now, would you explain what we mean by the term consignment?

A. We will ship a quantity of material to a particular customer which he carries in his warehouse location, the [fol. 443] title to which belongs to us until such time as the sale is made from that inventory, at which time he will submit a report on a monthly basis of the sales made during that reporting period for which he is billed.

Q. In other words, title is in you until your customer makes a sale?

A. That is correct.

. Q. And at that time you receive the payment?

A. We receive the reporting form from which we submit our invoice and then, of course, get paid.

Q. Ultimately receive payment?

A. Yes.

Q. Now, do you do this on a large percentage of your

wire and cable and aluminum conduit products?

A. As far as wire and cable, we consign to those people whom we think qualify for a consignment of the products, and this is based strictly upon the return on investment that we would get, or the turnover on our investment that we would get.

Q. Can you estimate it in the form of a percentage as to what the percentage of the products you sell of that type

are consigned, would that be feasible?

[fol. 444] A. All of our 600 volt building wire products, with some exceptions, are consignable.

Q. Are consignable?

A. Are consigned to consignable accounts.

Q. Is it an important part of your business, would you say?

A. It has been.

Q. Now, when you consign these goods to your customer, if your customer doesn't make sales of these goods promptly, your goods are tied up for the period—

Mr. Bergson: I object, your Honor.

By Mr. Melchior:

Q. I will withdraw the question.

The Court: I think we all know what consignment is pretty much without going into the details. It is the regular consignment of goods.

The Witness: That's right.

The Court: If sales are slow you can even pull the goods back.

The Witness: That's right.

The Court: If the fellow is a good salesman, why give him a larger consignment the next time.

· [fol. 445] The Witness: That's right.

'The Court: It is a pretty well recognized business practice that doesn't require the details to prove it.

#### By Mr. Melchior:

Q. Is this a sales practice that you like to engage in, Mr. Simmons, in order to sell

The Court: Sustained. What difference does it make? The consignment is recognized in lots of industries. A lot of people don't like it, but nevertheless I suppose they do it. It doesn't make much difference, what they like or don't like, does it?

### By Mr. Melchior:

- Q. Do your competitors in the field of wire and cable consign their goods also to your knowledge?
  - A. Some.
- Q. Can you name some that do in the field of wire and cable?
  - A, Phelps-Dodge, General Cable, Anaconda, Paranite.
- Q. Is that the Paranite Company that is a subsidiary of [fol. 446] Essex Wire and Cable Company!
  - A. That is right.
- Q. Now, do any of your competitors in the field of aluminum conduit consign their goods to their customers, to your knowledge!
  - A. Of aluminum conduit?
  - Q. Of aluminum conduit.
  - A. Yes.
  - Q. Could you identify those that do to your knowledge?
- A. To my knowledge, Kaiser, Alcoa and Reynolds for sure. I couldn'tetell you the policies of the other list of conduit people that I mentioned. I am merely not familiar with them.
  - Q. I see.

Mr. Melchior: You may examine.

Cross-examination.

#### By Mr. Bergson:

Q. Mr. Simmons, you stated that you made your decision to go out of the production of wire and cable products with aluminum as a conductor in 1958, is that right?

A. That's right.

Q. That was prior to the Alcoa-Rome acquisition, was [fol. 447] it not?

A. That is right.

Q. Therefore that acquisition had nothing to do with that decision?

A. Absolutely none.

- Q. Were the products that you were making with aluminum as a conductor the same type of products that you had been previously and subsequently made with copper as a conductor?
- A. Not in the wide range that we would make the copper products.

Q. But the

A. Some of them were similar.

Q. Were there any aluminum products that you made that you hadn't formerly made in copper?

A. Well, by design I would say the self-supporting drop cable, triplex, as you heard through the testimony.

Q. You dich't make that in copper?

A. No, sir.

Q. Have you made it since in copper?

A. To my recollection, no.

Q. You also said that the reason you went out of the fabrication of wire and cable products with aluminum as [fol. 448] the conductor was because you were finding it difficult to make a profit!

A. That's right, sir.

Q. I suppose among the factors contributing to that inability to make a profit were rising labor costs?

A. In itself the answer would be yes, it is pertinent to that product as well as any other product.

Q. Rising insulation materials cost?

A. Not necessarily.

Q. But possibly?

A. Possibly.

Q. Before I leave that, when you fabricated the aluminum products did you get new machinery with which to do it?

A. No.

Q. Did you fabricate it on the same machinery on which you formerly fabricated copper?

A. That's right.

Q. When you returned to the fabrication-or did you

fabricate both simultaneously?

A. During the same period, but at cycles of production. [fol. 449] Q. Right. And when you stopped fabricating aluminum you used the machinery full time on copper products?

A. That's right.

Q. Now, do you in the course of your business periodically review your product mix to see which items are profitable and which items are not profitable and to determine whether or not you should drop them from your line or whether you should add something to your line?

A. Every month.

Q. And in making that sort of review, if you should discover that it would be profitable to make conductors with—or wire and cable products with aluminum as a conductor, would there be anything to impede you from going back into aluminum?

A. Absolutely none.

Q. Could you for example go back and start making aluminum triplex again?

A. Yes, we could.

Q. And you could make copper triplex if you so desired?

A. Yes. Sure.

Q. Now, in talking about conduit, you described the [fol. 450] characteristics of rigid steel, thin wall, EMT I guess is the trade term, and fiber conduit, and aluminum conduit, and you described the advantages of steel and some advantages of aluminum and some disadvantages of aluminum; is there any conduit use of any consequence that you know of where steel conduit cannot be used and aluminum conduit would have to be used?

A. To my knowledge I know of no such qualification.

[fol. 451] Q. And do you consider aluminum conduit and steel conduit competitive with one another?

A. Yes, they are.

Q. When you refer to your competitors in aluminum conduit, according to my notes you mention Kaiser, ALCOA, Reynolds and Harvey, who are primary producers of the metal, H. K. Porter, Clifton Division of General Cable, Walker Brothers, Pittsburgh Steel Standard, Wheatland

Electrical Products, and Melchior asked you about Channel Master; do you know of a company named The Aluminum Rigid Conduit Corporation?

A. No, I don't.

Q. How about the Conduit Pipe Products Company of Harseo Corporation?

A. To my knowledge they only produce fittings.

Q. How about Hazelwood Engineering?

- A. They are a producer of conduit, an extrusion-
- Q. (Interrupting) It is used for the same purpose.

A. That's right.

Q. One is made by extruding pipe, the other is by threading!

A. Yes.

Q. And it is a step backward in the integration?

A. Yes.

[fol. 452] Q. How about Jasco Aluminum Products?

A. I have heard of them, I don't know anything about them.

Q. How about Clayton Mark?

- A. They produce conduit, I don't know whether they furnish aluminum or not.
- Q. How about National Supply, a subsidiary of Armco Steel!
  - A. A producer of steel; I am not sure about aluminum.

Q. How about Nikoh Tube Company?

- A. Again the same. In my listing I tried to name the companies I knew.
- Q. I understand that. I am not questioning your veracity or anything like that, I just asked whether you considered these companies. How about Steelduct?

A. The same answer.

Q. You don't know?

A. b don't know, they are rigid steel conduit producers, I don't know whether they supply aluminum.

Q. You mentioned Walker Brothers. Let me ask you one final question, no need of holding you unnecessarily.

Has the acquisition of Rome Cable by ALCOA hurt you in your business in any way?

A. I would have to say no.

[fol. 453] Mr. Bergson: Thank you.

Mr. Melchior: May I ask two questions?

The Court: Yes.

# Redirect examination.

### By Mr. Melchior:

Mr. Simmons, Mr. Bergson asked you if you would go back into the aluminum wire and cable field if the market conditions changed, and I believe you answered—

A. (Interrupting) I would.

Q. Would you go back under the market conditions as

they exist today?

A. Based on my knowledge of the market conditions at this time I couldn't answer you, because we haven't followed it as of recent date. We are just convinced it is not appropriate at this time.

Q. It is not.

A. That is right.

Mr. Melchior: That's all.

Mr. Bergson: Your Honor, in my haste to conclude with this witness I forgot to ask him a few questions. Would you indulge me?

The Court: Sure. Go ahead.

### [fol. 454] Recross-examination.

# By Mr. Bergson:

Q. Mr. Simmons, were you subpoensed to testify here at this hearing?

A. Yes, I was.

Q. Were you served with a subpoena duces tecum to bring documents?

A. That's right.

Q. Do you have a copy of that subpoena with you?

A. Yes, I have.

Q. Were you asked to bring with you all written communications betwen the Triangle Conduit and Cable Company and others since January 1, 1957, referring or relating in whole of in part to difficulties experienced by the Triangle Conduit & Cable Company in securing adequate profit returns by reason of the relationship between the prices of

conduit or metal purchased by Triangle Conduit & Cable Company and the prices of finished wire and cable products, excluding communications to or from the United States Department of Justice!

A. That's right.

Q. Did you bring in such letters?

A. I have no such letters. We have checked our files and found no such letters.

[fol. 455] Q. And were you asked to bring with you all written communications between the Triangle Conduit and Cable Company and others since January 1, 1955, referring or relating in whole or in part to difficulties experienced by the Triangle Conduit and Cable Company in securing adequate supplies of aluminum to be used in the production of aluminum wire and cable products?

A. That is true. A review of our files indicated no such letters.

Mr. Bergson: Thank you.

Redirect examination.

# By Mr. Melchior:

Q. With respect, Mr. Simmons, to the documents requested in your subpoena, do you know whether or not there was ever any documents like that in your business?

A. To my knowledge, there wasn't.

Q. As a matter of practice do you prepare written papers on matters like this?

A. As a matter of practice, we don't, we don't have time to be concerning ourselves with memorandums on subjects like this.

Mr. Melchoir: That's all.

The Court: Recess until two o'clock.

(Whereupon, at 12:15 p.m. a recess was taken until 2:00 p. m., this date.)

2:15 p.m.

Appearances:-As before.

DAVID DALE MARTIN, resumed the stand, testified further as follows:

Cross-examination. (Continuing)

# By Mr. Bergson:

Q. Dr. Martin, would you please look at your chart, Government's Exhibit 444, which is I think Chart No. 10. Now I would like to ask you why in compiling that chart you did not include figures of imports from foreign countries, particularly the Aluminium Limited?

A. I had no figures on imports from Aluminium Limited.

The Court. Keep your voice up.

The Witness: I didn't have the figures.

Q. Did you make any effort to obtain them?

A. Yes, I did. I found that figures on imports from government sources were not broken down on the same category, into the same category. I was unable to obtain any comparable figures for imports of EC aluminum in ingot. [fol. 457] Q. Did you write to Aluminium and ask for the breakdown as you wrote to the domestic companies and asked for the breakdown?

A. No, I did not.

Q. Now, you heard Mr. Probst testify this morning that when he was making EC redraw rod he bought the majority of his pig from Alcan; did you not?

A. Yes, sir.

Q. Are you aware of any other producers that buy pig and ingot for their purpose from a foreign source?

A. I have no personal knowledge, but I would infer that

they probably do.

Q. In the course of preparing your charts did it come to your attention that Southwire might have bought from Aluminium or from foreign sources?

A. I don't recall.

Q. Now, you also heard Mr. Probst testify this morning that now he buys his EC redraw rod from Southwire?

A. Yes.

Q. Why did you limit this chart to primary producers? [fol. 458] A. With respect to pig and inget of course primary producers are the—

Q. I am asking you about this redraw.

A. With respect to the rod and bar I simply made a comparable table based on the domestic sellers of both products.

Q. Do you know whether or not General Cable sells EC

redraw rod?

A. No, I do not.

Q. Did you make any effort to find out?

A. I didn't really inquire into that question, no.

Q. Why didn't you inquire of General Cable?

A. I would say that my primary reason was that I just didn't—I did not have time in the work I was doing to go deeply into this. I was preparing a lot of other charts and I used every data on this category, I used the material that I could obtain and didn't engage in a major research project on this particular question.

[fol. 459] Q. Well, would it have been a major research problem to write to General Cable and have asked for a lot of information, would it be too much to ask how much E.C.

redraw rod they sold?

A. No, it would not have been, but in the answers to the inquiries from the company that I was working with, I didn't have all the information that you are speaking of.

Q. I am familiar with the correspondence that has been exchanged between the Department and the companies that reported to the Department, because the Department made them available to us on a motion to produce, and in many instances I saw more than one exchange of letters. Now why couldn't there have been an exchange of letters here? General Cable didn't put up a fight about furnishing the first batch of information, did it?

A. Not to my knowledge, no, sir.

Q. I think this is pretty important, Dr. Martin, because on one of your charts here you have a footnote. I think it is chart—on a couple of them, as a matter of fact, let's take chart 6, which is Government Exhibit 439. For example, you have a footnote, 5, in which you do a little testifying, in which you say "If General Cable Corporation were [fol. 460] treated as an integrated company after the entry of Ormet Corporation, because of the inter-related stock relationship among General Cable, American Smelting and Refining Company, Revere Copper and Ormet Corporation, then the integrated companies share would be 91.3 percent in 1958 and 89.1 percent in 1959." Now if it was important to get that information in on that chart, why wasn't it important to properly report it on Government Exhibit 444, chart 10?

A. I think that it would have been proper to put it in if I had concluded that General Cable was one of the domestic primary aluminum producers. I did not put General Cable in here. I considered it a border line case. There was a question of definition as to which were integrated and which were not. I considered Olin Mathieson to be integrated because of a jointly owned subsidiary producing primary aluminum. General Cable I considered putting in on that table in the front and I ended up by putting it in the footnote and explaining it and leaving it out.

Q. Do you honestly think that General Cable is an

integrated aluminum producer?

A. I think that General Cable may have a relationship to source of supply of the raw material different from that of other non-integrated firms, yes.

[fol. 461] Q. Do you think General Cable gets its pig and ingot for anything less than anybody else gets it for?

Mr. Melchior? I don't know that that question is proper. The witness hasn't demonstrated any knowledge in that field.

Mr. Bergson: He demonstrated enough to put that in the footnote.

The Court: Overruled.

The Witness: Would you repeat the question, sir?

### By Mr. Bergson:

Q. Do you think that General Cable's so-called integrated position is sufficient so that General Cable would get any price advantage in acquiring its pig or ingot for making of rod than any other non-integrated company?

A. I don't know. It is a question of fact. I have no knowledge.

Q. It doesn't sound likely though, does it?

Mr. Melchior: The witness stated he didn't know, counsel.

Q. Now I would like to invite your attention to Government Exhibit 448, which is your chart 13, and you show on that chart aluminum E.C. redraw rod sold by Rome—

[fol. 462]. The Court: What is that number?

Mr. Bergson: 448, sir. The Court: All right.

#### By Mr. Bergson:

Q. The last line in the body of the chart shows a aluminum E.C. redraw rods sold by Rome.

A. Yes.

Q. What was the purpose of having that line on the chart?

A. Well, I think in order to take the production figures for redraw rod and get from that to the amount of redraw rod used by Rome, since they produced it, bought it, sold it and used it, it was relevant to put it all in. Perhaps it shouldn't have been on the last line.

Q. I am not quarreling with its position on the chart or even its existence on the clart. Did you have in mind in putting this line on a comparison between Exhibit 448 and the Exhibit that we were just talking about, Exhibit 444, to show Rome's percentage of sales of aluminum E.C. redraw rod?

A. No, I didn't, as a matter of fact, make any such comparison. I don't believe.

Q. But with that line there and with Exhibit 444, if it weren't for the fact that we were comparing oranges and [fol. 463] bananas, you could make a comparison of the sales of E.C. redraw rod by other companies, some of the other companies and sales of E.C. redraw rod by Rome.

A. Yes.

Q. Now in putting these figures down did you consider whether the E.C. redraw rod sold by Rome was sold for electrical conductor purposes or for non-electrical conductor purposes?

A. I took the figures from the interrogatory answers.

Q. The Plaintiff's letter of August 18—do we have that available! I am afraid I don't know the Exhibit No. to this, Your Honor.

The Court: Maybe they can help you. I am not certain that I do.

Mr. Melchior: I think we can find it in a minute, Your Honor.

The Court: All right.

## By Mr. Bergson:

Q. It is No. 27. I show you Government Exhibit No. 27, Question 3, and ask you if that is the data from which you prepared the material about Rome's sales in E.C. redraw rod that was tabulated in that chart?

A. Yes, it is.

### [fol. 464] By Mr. Bergson:

- Q. Now, on your chart you show for the year 1956 sales of 139,000 pounds of E.C. redraw rod by Rome?
  - A. That is correct.
- Q. Going back to question 3 in Government's Exhibit 27, does it appear thereon, of that 139,000 pounds, 124,000 pounds were sold to the Aerofin Corporation of Syracuse, New York?
  - A. Yes.
  - Q. All but 15,000 pounds in 1956?
  - A. Yes.
- Q. Do you know whether the Aerofin Corporation is a manufacturer of wire and cable products?
  - · A. To my knowledge, it was not.
  - Q. In 1957 on your chart you show sales by Rome of 418,000 pounds. What were the sales to Aerofin Corporation?
    - A. 341,000 pounds.
  - Q. In 1958 you show 387. What were the sales to Aerofin Corporation?
    - A. 373,000 pounds.
  - Q. The first quarter of 1959 you show 103,000 pounds. What were the sales to Aerofin Corporation?
    - A. 89,000 pounds.

[fol. 465] Q. In the second quarter of 1959 you show 138,000 pounds. What were the sales to Aerofin Corporation.

A. 184,000 pounds.

Q. So the overwhelming majority of Rome's sales of E.C. redraw rod was sold to one customer for non-conductor purposes; is that right?

A. That's right.

Q. Why didn't you break that out and show it in the chart?

A. I really don't know why I didn't.

Q. To the extent that we have a so-called line of commerce of E.C. pig and ingot and E.C. redraw rod as alleged by the Government, these figures then create quite a misleading situation; do they not?

A. I am not sure that they are misleading.

Q. If I had not brought that to his Honor's attention, don't you think his Honor would have thought they were all sales for E.C. conductor purposes?

A. I don't know. I gave sales of E.C. redraw rod on the other chart. I broke them down.

Q. I know you did. That is going to be my next question. Why did you break it down in one chart and not in this chart? Wasn't it because you broke it out in the other chart and made the E.C. figure smaller so that the per[fol. 466] centage of the Rome figures would be larger?

A. No, I don't believe I consciously considered that.

Q. Isn't that the effect of it?

A. That is true. Yes. I agree that is true. But you, I believe, give me credit for more analysis than I did.

Q. Well, I was tremendously impressed by your qualifications when Mr. Melchior reviewed them with you, and these charts are being offered in a very important lawsuit, important to the Defendants anyway, and I wanted the analysis to be as accurate as possible. Now, let's move on with an effort to get this job done, to the charts that you made, using NEMA figures as a universe.

Mr. Bergson: V culd you mark for Identification as Defendant's Exhibit AR-6

(Bulletin marked as Defendant's Exhibit AR-6 for identification.)

Mr. Bergson: Defendant's Exhibit AR-6 for identification is a statistical bulletin put out by the National Electrical Manufacturers Association called "Summary of net sales to domestic customers FS56, from July 1 to December 30, 1960, rigid metallic conduit and electric metallic tubing section," and it is dated April 21, 1961.

[fol. 467] Q. I think if you will refer to Government's

Exhibit 459—

Mr. Melchior: Are you talking about AR-6?

Mr. Adler: The witness has it.

Mr. Melchior: You will have to tie it into a government exhibit.

Mr. Bergson: I have.

Mr. Melchior: Which one is it?

Mr. Bergson: I said if you will look at Government's Exhibit 459.

Mr. Melchior: 459, yes.

Mr. Bergson: As you arose to your feet I was about to say, "which is used as a source material for their exhibit."
Mr. Melchior: Yes.

Q. I show you Defendants' Exhibit AR-6 for identification and invite your attention to the third line thereof which says under description, "5RM-2 aluminum group, 6,709,000 then (seven companies), and I ask you if this is the material from which you obtained your universe figures for the exhibit in question?

A. Yeso it is.

Q. Now, we note there that it says seven companies [fol. 468] under aluminum?

A. Yes.

Q. Did you make any effort to find out whether there were any more than seven companies producing aluminum conduit?

A. No, sir, I didn't.

Q. Did you have that information available to you?

A. I might have had some information relevant to that.

Q. Well, in your source material, you say that you got. ALCOA's figures from interrogatory 53 and Rome's figures from Defendants' answers to interrogatory 54, and in the same volume there are answers to interrogatory No. 55 and 56. Did you look, while you were looking at interroga-

tories 53 and 54, did you look at interrogatory 55 and 56 and the answers thereto?

A. I have looked at it. I am not sure I looked at it when

I looked at 53 and 54.

Q. Well, look at it now and count for us the number of companies producing or selling aluminum conduit in September, 1960 and currently, bearing in mind this interrogatory was answered in April of 1961?

A. I am checking to see what the abbreviations mean.

Q. "P" means "producing" and "S" means "selling."

A. I see nine listed as producing and one additional one

[fol. 469] selling on September 1, 1960,

Q. Now, how many do you find listed under current date, bearing in mind that the interrogatory was answered in the first quarter of 1961?

A. Thirteen listed as producing and seven listed as

selling.

Q. Right. Now, you heard Mr. Simmons testify this morning that he didn't produce conduit, aluminum conduit but merely sold it and he reported his sales to the Aluminum Association, to NEMA?

A. Yes, sir.

Q. Now, if you had checked when you were preparing this chart against the next interrogatory you would have seen how grossly inadequate the number of the companies reporting to NEMA was; would you not?

A. The purpose for which I prepared the chart-

Q. I would like an answer to my question, not why you prepared the chart.

A. I think inadequacy has to be judged in terms of pur-

pose.

[fol. 470] Q. How many companies did you say there were—twenty, twenty producing or selling, and seven reporting. Let me ask you this, if you had checked and you saw that there were twenty producing and selling and only seven reporting, would you have prepared the charts at all?

A. I knew when I prepared the chart that this did not give a complete picture of the conduit industry. I prepared the chart quite recently after the original chart I prepared on the topic was submitted to the defendants and defendants in their list of objections that they sent to the plaintiff said they would object to the accuracy and reliability of the

census universe figure on conduit. I thought therefore it would be useful to prepare a tabulation to get into the record the only other source I had any knowledge of that purported to give an industry total of shipments on aluminum conduit, and I set it out in a tabulation, simply substituting the NEMA figure for the census figure that I had in the other chart.

I made an adjustment for Alcoa's shipments because I knew that Alcoa had shipped, and I knew how much, Alcoa

had shipped.

[fol. 471] Q. When this chart was prepared it was prepared for submission to the court. It has been offered in evidence, I presume on the expectation that the Court would be instructed or illuminated by it. Is it your position that this chart in any way reflects the accuracy of the market position of the various companies, particularly Alcoa and Rome, in the aluminum conduit field or the combined aluminum steel and EMT fields which are based on that same NEMA report, which are Government's Exhibit 459, the one we are talking about, 460, 461, 456 and 457?

A. I think that this information should not be taken all by itself. I think that in conjunction with other information a that is presented in the tables, based on census sources.

Q. That is another table.

A. It is another table, but this table was intended to be put into evidence with other tables as part of the picture.

Q. What you tried to do is shore up a weak table with a weaker one.

A. Trying to give what information I could find on this question of conduit sales and shipments and production [fol. 472] about which very little information is available on a national basis.

Q. And which has very little probative value. Now one other thing that I want to bring up, and I can't say that I bring this up with any pleasure, but I have to inform you that in addition to the infirmity in your Universe figures you are adding to the Universe figures, including additional totals for Alcoa, and that was a mistake because even though it is to our disadvantage, Alcoa's figures are reported in the NEMA figures.

A. I am very glad to get that information, Mr. Bergson, I prepared it with two alternatives—

Q. But you didn't prepare it at all with the information

that Alcoa is in NEMA. Why didn't you ask us?

A. I didn't ask you because I prepared this at the very last minute before coming to the trial. I didn't have an opportunity to do so. I had alternates that would be sure that I leaned over backwards not to make it too small.

Q. Well, I relieve you of the necessity of leaning over

backwards.

The Court: Just a minute before you leave that, see if I [fol. 473] understand about this 459, which is the only one

I am trying to follow closely.

Now, Dr. Martin, you in substance say, if I understand it, that for the second half of 1960 Alcoa had a percentage of the industry total of rigid and EMT, sales of rigid and EMT conductor, I suppose that is—

Mr. Bergson: That is electrical-mechanical tubing, which

is a form of conduit.

The Court: All right, a form of conduit, of 7.6 percent; is

that right?

The Witness: Using this industry total as a base, their sales would be 7.6 percent counting only the sales by Alcoa that the Rome division had nothing to do with.

The Court: Yes. And then Rome's sales as agent would

be 20.7?

The Witness ! Yes, your Honor.

The Court: Well, now, if I understand the last few questions of Mr. Bergson right, your industry total is way too [fol. 474] low because you didn't include in it the sales made by companies who are engaged in this business as indicated by these answers 54 and 55, 57 and 58.

The Witness: Yes, your Honor, it is too low to the extent that some firms did not report to NEMA; it is too high to the extent, as Mr. Bergson just pointed out to me, that Alcoa's total was reported to NEMA. I had assumed that it was not, because their name did not appear as a participating company. It does appear Rome reported the total sales—

Mr. Bergson. Rome reported for Alcoa.

The Witness: That makes the industry total too big, and it tends to be too small in the fact that there are some other companies the interrogatory answer indicates were

producing the product who did not report to NEMA. I don't know how much they sold. This is the information that I would like to have.

The Court: I don't either.

[fol. 475] The Witness: I do know, however, that they were presumably reporting to the census, and my other tabulation shows the census total.

The Court: How can I use this chart, for instance, as any basis or as the basis for any conclusion if I am advised that several companies who are manufacturing or selling this product are not included therein?

The Witness: I should hope, your Honor, that perhaps additional information may come into evidence. On the

basis of this you can't do it.

The Court: That is exactly what I thought.

The Witness: You can't do it. I would put much more weight on my No. 458 which gives value of shipments of conduit in 1960 based on census. But the defendants had objected to the census table and I was trying to be sure I had all relevant information into my tabulation.

The Court: Well, in making up your chart which on its [fol. 476] face—or charts, I assume it is supposed to represent the total of the condition in the industry—

The Witness: Your Honor-

The Court: Wait just a minute, couldn't you find out in some way how many firms manufacture or sell this particular item that are missing, for instance, from the census list?

The Witness: I cannot find that out.

The Court: Well, of course, you see I suppose when I get down to this I have got to say, put down, this is the condition of the industry. Well now, unless you furnish me something more than you have, simply by telling me that this is the industry as reflected by the census reports, this is the industry as reflected by the NEMA reports, and then advising me that you know that all of the industry is not reflected in either report; how do I ever use them for any purpose whatever?

The Witness: Your Honor, I do not know that all the industry is not reflected in the census. The census figures [fol. 477] are a little bigger than the NEMA figures where I have comparable figures. The difference between them

might be the shipments of those companies that didn't report to NEMA. So far as I know the census figures are accurate. I put these in as just supplementary information. They might have turned out to be different.

The Court: I don't blame you, Mr. Martin, at all, because after all what you did, you prepared statistics on the information that was given to you or that you got, but what is puzzling me a little bit is how much reliance I can place upon them if as appears in NEMA, they concededly don't

represent the industry. .

The Witness: I think, your Honor, that the value of the NEMA table is of a negative sort. It shows that NEMA did not report a much larger figure than census, in fact, it reported a somewhat smaller one. It certainly does not stand by itself as a sufficient basis for judging the structure of the industry.

[fol. 478] The Court: Well, of course, as this case goes on there may be more produced, but the thing that bothers me when I sit down to write and say this is the condition of the industry, I certainly can't use the Nema report, can I?

The Witness: Only to the extent that it is sort of limited. The Court: I either have got to put it in my decision or leave it out. My job I suppose would be to find the condition of the industry. I think we are by the proposition that we can't use the Nema. I am wondering if I could use the Census.

The Witness: My knowledge of the Census figure is based only on conversations with people in the Census Bureau who prepared them and I was very careful to get the very latest figure. If there had been a revision, and there was a revision I incorporated that into the table. I believe that as far as it is possible to ever get adequate, accurate figures of this sort in an industry where companies are reluctant to make known their individual information. The Census is a reliable source. It is a source that is including information that is not disclosed. They don't give out [fol. 479] individual company reports and they are carefully checked and when new information comes in they issue a change slip—

The Court: You used it the best you could. The Witness: I used it the best I could. The Court: I don't find any faults with that.

The Witness: I found the Census to be usually accurate. The Court: Doctor, I am not worried about you or these fellows. I am worried about myself, where I am going to get it from. I don't care so much about them. All right,

perhaps I confuse more than I help.

Mr. Bergson: Your Honor, I would like at this time to move to strike the Government Exhibits 459, 460, 456 and 457 which are all subject to the infirmities we have just been discussing.

The Court: 459, 460, 456 and 457. I think I will reserve decision and let's see what happens to them. They don't look much good to me now, I will say that, on the motion to strike.

## [fol. 480] By Mr. Bergson:

Q. I'm going to ask you just about one more chart, Dr. Martin. That is Government Exhibit 465, which is your chart 25, I believe.

A. Yes, sir.

Q. The Defendant did not object to this chart, as you know, because it accurately portrays what it purports to portray, but what I would like to ask you is why in preparing a chart of that capacity existing or under construction in the years, at the end of 1960, you didn't do what you did in other charts and make comparisons with preceding years.

A. I think this chart does not directly relate it to the market categories that I was trying to get a picture of, and this was sort of an extra chart to show the domestic primary producers and their relative sizes.

Q. To show that ALCOA was the biggest one?

A. I think the reason it shows that ALCOA was the biggest and Ormet is bigger than Harvey.

Q. But it doesn't show what would have appeared if you had used earlier years and while ALCOA is the biggest now it was a heck of a lot bigger prior to that.

A. That's right, it doesn't that.

[fol. 481] Mr. Bergson: Would you mark as Defendant's Exhibit AR-7 a chart entitled "Primary Aluminum Capacity, Production and Supply."

(Chart referred to above marked as Defendant's Exhibit AR-7 for identification.)

Q. This chart has previously been shown to counsel for the Plaintiff and they have expressed no objection to the accuracy of the figures contained in the chart. And I ask you to look at this chart and look at the year 1948 and tell us what percentage of primary aluminum capacity in the United States ALCOA had in 1948.

A. 50 percent.

Q. And what percentage did it have in 1954?

A. 41 percent.

Q. And what percentage did it have in 1960?

A. 35 percent.

Q. Does this—were the sources from which this information was compiled, which was stated on the face of the document, available to you?

A. Yes, they were.

Q. Now you also prepared a chart showing the number of new entrants into the aluminum wire and cable industry from 1955 to 1961, that is Government Exhibit 447. I beg [fol. 482] your pardon—strike that. 442.

A. Yes, sir.

Q. Now the source material for that information was the Department of Commerce, B.D.S.A. directory of aluminum suppliers dated April of 1961, and another one dated June 30, 1955, is that right?

A. Yes.

Q. Now we have already marked for identification, let me ask you this first, why didn't you prepare a similar chart regarding the entry of primary aluminum producers?

A. I think I included some information on that in some other charts, in some footnotes.

Q. It wasn't because the result would have been quite the opposite; was it?

A. I think, I really don't know why I didn't. There are a lot of charts I didn't prepare. It is hard to say why I didn't. I don't think I considered it and rejected it for a specific reason.

Q. Let me ask you this, and maybe you are not qualified to answer it, and if you are not I won't press it. But you are an economist and you are a teacher of economics and business statistics at the University of Indiana and very highly regarded one. Let me ask you this, in your judg-[fol. 483] ment is it harder or easier for a company to enter into the business of producing primary aluminum than it is to enter into a business of producing aluminum wire and cable?

Mr. Melchior: I object to that question, no basis has been laid.

The Court: Overruled.

A. I don't believe I can honestly answer the question. I don't know. There are so many things that determine ease of entry, and I am not in any position to answer it.

Q. You just don't know whether it is easier to become a primary producer of aluminum than it is to produce insulated wire and cable.

A. I made no study of this question and I wouldn't want to give an opinion on it without doing so.

Mr. Bergson: Mr. Reporter, will you mark for identification as Defendant's Exhibit AR-8 a directory of aluminum suppliers as of June 30, 1955 published by the United States Department of Commerce, Bureau of Defense Service Administration.

(Directory above referred to marked as Defendant's Exhibit AR-8 for identification.)

## [fol. 484] By Mr. Bergson:

Q. Now I show you Defendant's Exhibit AR-8 for identification and ask you if that is the same directory that you used in compiling the information contained in Government Exhibit 442?

A. Yes, sir.

Q. And would you please look at that and tell me how many primary aluminum suppliers are listed for 1955? Right on the first page, I think.

A. Three.

[fol. 485] Q. Now, look at Defendant's Exhibit AR-5, which is revised as of April, 1961, and tell me how many primary aluminum suppliers are listed in that directory?

A. Six.

Q. 100 per cent more than there were in 1955.

A. Yes, sir.

Mr. Bergson: Thank you, Dr. Martin. I am sorry to have kept you so long.

The Court: Redirect, if any, Mr. Melchoir.

Mr. Melchoir: No redirect, your Honor.

The Court: I guess they are through with you, Doctor.

(Witness excused.)

Mr. Melchoir: Mr. Murray.

Mr. Bergson: Who? The Court: Murray.

Mr. Bergson: He is not on the list that you gave me yesterday.

Mr. Melchoir: He wasn't on the list as of yesterday?

Mr. Bergson: No.

Mr. Melchoir: If you are not prepared, I won't put him [fol. 486] on. I thought I had given counsel all my witnesses for this week.

Mr. Bergson: It is all right.

The Court: Why don't I take a five-minute recess and maybe you can work it out.

Mr. Bergson: I can be ready, your Honor.

The Clerk: Court is in recess.

(At this point a short recess was taken after which the trial was resumed.)

HOLT A. MURRAY, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Melchior:

Q. Would you state your full name and title?

A. Holt A. Murray, Vice-President, Salesmanager, Crescent Insulated Wire & Cable Company, Trenton, New Jersey.

Q. Now, Mr. Murray, in giving your testimony I would

suggest you talk slowly and clearly so the Court can hear everything you say.

A. All right.

Q. How long have you been in the wire and cable busi-[fol. 487] ness, Mr. Murray?

A. Since 1945, sir.

Q. And is this organization with which you are concerned a family concern?

A. Yes, it is.

Q. And your experience has been primarily in what field?

A. In sales, all but about two years of my time has been in sales.

Q. And those two years?

A. Well, I was learning the ropes in the factory that early part of the time I was there.

Q. Now, when was Crescent Insulated Wire & Cable Company founded

A. 1892.

Q. In what general type of business is it engaged in?

A. Most of that time it has been insulated wire, building wire, primarily.

Q. Both aluminum and copper?

A. Yes.

Q. Now, would you state for the record your approximate annual sales of wire and cable?

A. Approximately fourteen million dollars a year, currently.

Q. Would you be a little more specific now and indicate to us generally the type of wire and cable products manufol. 488] factured by Crescent?

A. Well, we make the standard building wire items used in commercial buildings, control cables, machine tool wire, power cable, up to 15,000 volts, steel armored cable for power distribution use, portable cords to an extent, varnished cambric cables, that is also power cable. I think that covers it generally.

Q. Now, do you consider this to be a fairly broad line of wire and cable products?

A. Yes, I would say it is fairly broad. There are others, of course, who make products that we don't make. We don't make any paper cable or asbestos insulated cable.

Q. But what sort of insulated cable do you make?

A. Rubber insulated, plastic insulated, they are the two main categories, synthetic rubber and plastic.

[fol. 489] Q. Now, are you a rod drawer?

A. Yes.

Q. What is your raw material that you use in making copper wire and cable!

A. We buy electrolytic copper rod and draw from that.

Q. And who are your suppliers of copper rod!

A. Mainly Phelps-Dodge Copper Products.

Q. Now, you said you draw some aluminum wire and cable also?

A. Yes, sir.

Q. And what is the raw material that you use in drawing the aluminum wire and cable?

A. We draw again from aluminum rod, electrolytic aluminum commonly known as EC aluminum.

Q. Now, Mr. Murray, the reporter will have to get this down on the record. If you will speak a little more slowly he will be able to read it afterward.

A. All right.

Q. Now, would you state in general the type of customer

your company has, in a general sort of way!

- A. We sell mainly through electric distributors or whole-salers as they are sometimes called. We do sell other accounts, OEM, original equipment manufacturers as they [fol. 490] are called, and some utility firms, but primarily it is through electrical distributors.
  - Q. And what is your sales area for these products?

A. You mean the distributed items alone?

Q. Yes, in what parts of the country do you distribute these products?

A. Well, we go as far west as Minnesota, Iowa, Nebraska. We do not sell on the West Coast.

Q. I see. Would you state generally your most significant competitors, the companies that you meet on a daily basis as competitors in the aluminum wire and cable field—I am sorry, in copper.

A. Triangle Conduit and Cable Company; General Cable Corporation; Anaconda Wire and Cable Company; Phelps-Dodge, that is their division is Habishaw Wire and Cable; Circle Wire and Cable Company; Hatfield Wire and Cable Company; Paranite Division of Essex; Narragansett Wire

and Cable Company; Walker Brothers, Rome Cable and H. K. Porter Corporation. There are maybe a few smaller other ones, but they are the important ones.

Q. I see. Now, some of these competitors of yours are

integrated copper companies; is that true?

[fol. 491] A. That is true.

Q. Could you indicate which of these are integrated copper companies, and by integrated copper company I mean

a company who produces primary copper.

A. Anaconda Wire and Cable is associated with Anaconda Copper; Phelps-Dodge Copper Products. And that would be it as far as the integrated ones I mentioned before.

- Q. I see. Now, would you tell me who your most significant competitors are in the aluminum wire and cable field?
- A. Well, we don't do a great deal in aluminum right now. Well, I would say Kaiser is a big factor in aluminum wire. Rome. Paranite. As far as aluminum is concerned I would say they are the main ones I would think of at the moment.
- Q. And do you know which of these are primary aluminum producers!

A. Kaiser and Aluminum Corporation of America.

Q. What specific types of aluminum wire and cable have you made?

- A. We made some building wire back when copper was very scarce. We made service entrance cable and the [fol. 492] service drop cable known as triplex. That is about the limit of it.
  - Q. Do you still engage in these types of wire today!
- A. No, I would say we are almost completely out of that line.

Q. Can you state why you are almost out of that business, if you know?

A. Well, we have investigated from time to time to determine whether or not we can get into this triplex for instance, and also the service entrance cable, and the way it looks to us is that we can't compete in those lines. By that I mean we cannot justify the expense of going into it for the return we feel we could get.

Q. Were you in that business at one time?

A. Yes. We made quite a bit of service cable. We made some triplex and made quite a bit of building wire.

Q. All out of aluminum?

A. Yes, sir.

Q. Has the demand for those products in aluminum held up?

A. Not in the building wire end of it. We don't see much [fol. 493] market in building wire, but there is a market for triplex and the service entrance.

Q. Now, at one time, if I understand your testimony, you at one time produced and sold more aluminum wire of that type than you are producing today; is that correct?

A. That is true.

Q. And you indicate that the demand fell off, I believe?

A. That's right. The demand for the building wire fell off. There is very little demand for it at the present time. This is a rubber-covered 600-volt single conductor building wire.

Q. Did any of your former customers indicate to you why they didn't want to purchase aluminum building wire from you, if they did?

A. As near as I can find-

Mr. Bergson: Just yes or no to that question.

Q. Did any of your customers indicate the reason for not purchasing aluminum building wire from you?

A. There were problems—

Q. He wants a yes or no answer.

[fol, 494] Mr. Bergson: Go ahead.

Q. Is the answer yes?

A. Yes.

Q. Would you state what the reasons were that were given to you?

A. There were problems with the installation of building wire.

Q. Would you explain that a little further?

A. There were problems with making the connections and terminations.

Q. Can you indicate precisely what the problem was?

A. Making electrical connection to terminate the line to tie it into a panel board or something of that sort. Means getting a connector on the end of the cable so as to fasten it to the panel board. And there were problems there that had, which apparently there was some trouble possibly due to lack of experience on the part of those installing it.

[fol. 495] Q. Did they indicate any other reasons, your customers, did your customers indicate any reason why they did not want to purchase aluminum building wire?

A. Well, I don't know of any specific reasons why they don't, other than what I have mentioned. There just wasn't the market for it. The wholesalers customers did not want

to use aluminum, is what it amounts to.

Q. Do you sell flexible copper wire and flexible copper cords in your business?

A. To some extent we do.

Q. Do you-

A. (Interrupting) Light strand wire, flexible wire, yes.

Q. Do you sell aluminum flexible wire and cords, also?

A. No, sir.

Q. Did you ever?

A. No, sir.

Q. Have you ever thought of selling that as an item of your line?.

A. Well, no, we haven't, I don't think there is any real market for it.

Q. You don't think-

A. (Interrupting) In the flexible strands as far as I know.

[fol. 496] Q. Can you state why, if you know?

A. Well, the problems having to do with the fine wire drawing and stranding of aluminum are different from those of copper. As I understand it, the copper will stand the drawing better and after it is made into a flexible wire, it will stand flexing better than aluminum.

Q. Well, I am not sure I understand your answer as to

the difference between them.

A. Let me try to explain it. I think aluminum is more brittle than copper, and if you can draw it down to a fine size, say a real fine wire, the same size you can copper, it still will tend to break more readily than copper on flexing of the cable after it is in a cable after it is installed.

Q. Are you familiar with the Rome Cable Corporation as

it existed prior to the merger?

A. Yes, I am.

Q. Was Rome Cable Corporation a competitor of yours?

A. Yes.

Q. Did Rome Cable Corporation have a line of products, wire and cable products as broader or broader than yours?

A. I would say even broader than ours. There were some [fol. 497] things they didn't make that we did; there were others they made that we didn't make.

- Q. Are you familiar with Rome Cable Corporation's reputation in the wire and cable community prior to the merger as a producer of wire and cable?
  - A. Yes.

Q. What was it?

A. They had a very fine reputation in the field.

Q. Now, Mr. Murray, I'd like to ask you a little bit about your success in making a profit on the sale of aluminum—strike that, on the sale of copper wire and cable. I don't want to go into trade or business secrets. I want to be eareful on that point. But I would like to ask you if you can indicate to me as respects the sale of wire and cable over the last five or six or ten years, what your profit margins have been over the last several years in the sale of copper wire and cable?

A. Well, in 1956 -

Mr. Bergson: I doubt the relevancy of this, Your Honor. The Court: I doubt it myself, but I think I will take it if the witness wants to testify about it. Go ahead.

The Witness: In 1956 our profits were fair, but since [fol. 498] that time they have definitely been on the decline and that has continued right through to 1961.

Q. Since 1956 there has been a decline in your profits!

A. That's right.

Q. Your profits now are lower than they were in 1956?

A. That's right.

Q. In the field of copper wire and cable?

A. That is right.

Q. Now, ear you attribute this lowering of profit ratios to anything in particular?

A. Well, it is a matter of competition, I suppose, is one way to answer it, the prices have declined in general since that time.

Q. Have market prices of wire and cable, copper wire

and cable, declined?

A. I think that is a fair statement in general. I wouldn't say it has declined each year a certain amount, but I think, generally, they have declined, and of course some costs have gone up in the meantime, others have stayed about the same.

Q. But on the whole you feel as respects copper wire and cable that the market price currently is lower than it was in 1956?

Mr. Bergson: He is leading the witness, Your Honor.

## [fol. 499] By Mr. Melchior:

Q. I will change it. Do you feel the market price today is lower than it was in 1956? I think the witness stated that and I was repeating what he said.

A. Yes.

Q. Now, I believe you stated earlier, that the raw material you use in drawing copper wire and cable was copper wire bar or rod?

A. Rod.

Q. Copper rod?

A. Yes.

Q. Now, can you tell me what the relationship between the price you pay for copper rod today, electrolytic copper rod, as compared to what you paid for electrolytic copper rod in 1956, is the price today lower, higher, or about the same?

Mr. Bergson: This is going pretty far afield, your Honor. Mr. Melchior: If counsel will state the basis for his objection. I would try to answer it.

The Court: He says it is far afield, that means far from

anything we are concerned with.

[fol. 500] Mr. Melchior: You mean because we are discussing copper, is that your point?

Mr. Bergson: No, because you are discussing copper rod prices, copper—as a matter of fact, I forgot even the question now.

The Court: All right. We will settle that by overruling the objection and getting the answer if we don't know the question.

Mr. Bergson: It was so irrelevant I can't even remember the question.

Mr. Melchior: We think it is relevant, Your Honor, but

since you have overruled the objection-

The Court: All right.

The Witness: Well, I can't quote offhand prices of copper as we paid for it in 1956, as compared to today, I am not sure of that.

#### By Mr. Melchior:

Q. Well, have you ever made a study as to the difference between what you have to pay for copper rod and what your sales price for copper wire and cable is to try and determine what portion of the sales price of your copper and wire is represented by the cost of the rod, the basic raw [fol. 501] material?

A. Yes, we have made that study monthly for as far back as I can remember, into the early fifties, anyway.

Q. You have made this on a monthly basis back as far as the early fifties?

A. Yes, sir.

Q. Now, I ask you if you can recall back to the year 1951, for example, the early fifties or 1950 or through that period, and if you can state what the ratio was between the cost of copper rod, your basic raw material, and its market price of the copper wire and products that you sell?

Mr. Bergson: For what period?

Mr. Melchior: For the period 1951. Mr. Bergson: Just the year 1951?

Mr. Melehior; Or the first year you can recall figures for.

A. Well, back in 1951 the cost of copper rod represented approximately 23 per cent of the selling price of the wire and cable produced from that rod.

#### By Mr. Melchior:

- Q. The rod represented 23 per cent of the sales price of aluminum copper wire and cable product?

  [fol. 502] A. That's right.
- Q. Was that for a particular type of wire and cable product?

A. No, it covered the whole range of products we manufactured.

Q. And you stated you had a fairly broad line?

A. That's right.

Q. Now, would you recall the figures for any subsequent year?

A. Well, it has gradually increased, that percentage has gradually increased to the point where in 1961 that represented 49 per cent, approximately 49 per cent of the selling price of the finished product.

Q. In other words, in 1951, your basic raw material in the production of copper wire and cable represented about

23 per cent of the cost of the copper wire and cable?

A. That's right.

Q. And the trend was steadily upward until 1961 when it represented—I didn't hear your last figure.

A. 49 per cent, not of the cost but of the selling price.

Q. Of the selling price?

A. That's right.

Q. Need I ask you what effect that has had on your profit [fol. 503] ratios in the field of copper wire and cable?

A. Well, I think it is pretty clear what it does do.

Q. What has been the effect?

A. It has certainly put a squeeze on us, there is no doubt about that.

Mr. Melchior: You may examine. .

#### Cross-examination

### By Mr. Bergson:

Q. Mr. Murray, the reason for this so-called squeeze, the difference between 23 per cent and 49 per cent represented—is that represented by an increase in the price of rod?

A. Perhaps that is some of it.

Q. But it is mainly due to the decrease in the price of the wire and cable product itself!

A. I would say that is the main factor.

[fol. 504] Q. And to the extent that you have suffered by this decrease in prices the public has gained by getting wire at a cheaper price?

. A. Well, that is true, if you want to look at it that way.

Q. When you went into the business of manufacturing aluminum wire and cable, I think you said it was in the fifties.

A. I don't believe I mentioned a specific date. We did it at a time copper was scarce. I believe it was in the late forties, if I am not mistaken. It may have been either that time or just the time of the Korean war.

Q. Now, what new machinery did you install for the

drawing of aluminum wire and cable?

A. We didn't install any new machinery.

Q. You drew, stranded and insulated aluminum on the same machinery that you insulated, drew and stranded copper?

A. That is correct.

Q. If the occasion arose today where you got an order for a conductor product, with aluminum as a conductor, would you be in a position to manufacture?

A. Yes.

[fol. 505] Q. When you went into the aluminum drawing, stranding, did you need any new employees?

A. Yes, I think we did have to have some.

Q. Because of the technical ability?

A. No, not that. What we did was draw the aluminum over right off the old machine that we had previously used on copper, and we did not want to manufacture with the large machine we were using on copper.

Q. So you had two machines running at the same time?

A, That's right.

Q: You didn't find that you needed any additional technical confidence or anything like that?

A. No, no problem there.

- Q. If it became profitable for you to make service drop cable when using aluminum as a conductor today, would you go into that business?
  - A. Yes, we would.

Q. And what sort of an investment would it require for you to go into the business?

A. It wouldn't be an additional investment with the

exception of inventory investment.

Q. You wouldn't need any new plant or any new ma-[fol. 506] chinery? A. No. sir.

Q. You could rapidly shift over-

A. That's right.

Q. —to aluminum. So that the reason you are not making aluminum today is not a matter of ability, not a matter of investment, it is just a matter of profitability?

A. That's right.

Q. And I think you said you reviewed your conductor line periodically?

A. That's right.

Q. To determine whether or not you should go into it. And do you periodically consider whether or not the time is now ripe to go back into aluminum?

A. That's right, we do.

Q. And if you discovered the time was now right your decision would be to go back into aluminum?

A. That's right.

Q. Are you appearing here under subpoena?

A. Yes, I am.

Q. Was that accompanied by a duces tecum provision requiring you to bring documents?

A. Yes, it was. (Hands document to counsel.)

[fol 507] Q. I notice that the subpoena requests you to bring with you all communications between your company and others since January 1, 1957, referring or relating in whole or in part to difficulties experienced by the Crescent Insulated Wire and Cable Company in securing adequate profit returns by reason of the relationship between the prices of conductor metal purchased by the Crescent Insulated Wire and Cable Company and the prices of finished wire and cable products. Did you bring any such documents with you?

A. No, I did not.

Q. Do you have any such documents?

A. No, I did not.

Q. Do you recall, do you have a records retention program?

A. Well, we keep a lot of records. I don't know what you mean exactly by records retention program.

Q. That is an euphemism for a record destruction program.

A. We keep them quite a while. Our records go back.

- Q. Your records go back to 1957! [fol. 508] A. Yes, sir.
- Q. And were you also asked to bring with you all written communications between the Crescent Insulated Wire and Cable Company and others since January 1, 1955, referring or relating in whole or in part to difficulties experienced by the Crescent Insulated Wire and Cable Company in securing adequate supplies of aluminum to be used in the production of aluminum wire and cable products?

A. We have no such documents.

Q. And your records go back to 1955 as well?

A. Yes.

Q. Now you testified, Mr. Murray, that one of your competitors in copper products was Rome Cable Corporation?

A. That's right.

Q. Has the acquisition of Rome Cable Company by Alcoa hurt you in any way?

A. I can't say that it has. I can't definitely say that it has at all.

Q. And you also said that they were one of your competitors in aluminum products. I noticed that you didn't say that Alcoa had been one of your competitors in aluminum

products.
[fol. 509] A. Well, that was an oversight. Certainly they

are.

Q. Has the acquisition hurt you in these products?

A. I would say no.

Mr. Bergson: No further questions.

Mr. Melchior: No further questions, your Honor.

The Court: All right.

(Witness excused.)

Mr. Mahaffie: If the Court please, the Government at this time is going to offer into evidence some documents. Now, with the Court's permission I am going to follow the same procedure Mr. Melchior used the other day. That is I will offer these documents in groups and give the Court as brief a description as I can of each group, with some discussion of individual documents within the group. We hope that this will be the most expeditious way of getting this in.

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Mr. Bergson: Your Honor, if the purpose of this discussion is to tell you what the documents are, I have no ob-[fol. 510] jection. If the purpose of the discussion is to testify regarding the documents, I do object, and if permitted, I would hope that I would be, if they are permitted to do so, I hope I can be permitted to testify in rebuttal.

Mr. Mahaffre: I have no intention of testifying.

The Court: The difficulty is that we lead right into argument rather than evidence. I think that you ought to confine yourself as much as you can, and I am not going to be very finicky about it, and I certainly will give Mr. Bergson a chance here, but confine yourself as much as you can to a statement of what the document is rather than an argument over it.

Mr. Bergson: That seems to me to be the more appropriate thing.

Mr. Mahaffie: I certainly will. In some instances I would like to read from the document.

The Court: Oh, yes, I will let you call my attention to [fol. 511] something particular about it.

### OFFERS IN EVIDENCE

Mr. Mahaffie: The first group of documents which have been numbered GX 52 through GX 70 for identification. I offer GX 52 through GX 70 in evidence at this time.

Mr. Bergson: We have no objection to any of them.

The Court: All right, I will receive them.

(Government's Exhibits GX-52 through GX-70 for identication received in evidence.)

Mr. Mahaffie: Now, would the Court like these documents to be handed up while I am discussing them?

The Court: No. I couldn't digest them that fast.

Mr. Mahaffie: This group of documents, your Honor, begins with GX-52, which is an address by A. D. R. Fraser, president of Rome, given to the members of the Rochester Society of Investment Analysts in January, 1957,

[fol. 512] We offer this document primarily to show the history of the Rome Cable Corporation.

Now pointing to a few specific items in the speech on page 1 Mr. Fraser notes that the company was incorporated in 1936. On page 2 I will quote from the second paragraph:

"When we started in business in 1936, we were the only independent company to have its own copper rolling mill. Now there are three or four others."

This is as of 1957.

"Our rolling mill and bare wire fabricating units process sizeable quantities for General Electric, Westinghouse and other wire fabricators. We have one wire and cable plant in Rome, New York and a steel conduit plant in Torrance, California, which we acquired in 1950. This is the only

conduit plant in operation today west of St. Louis.

"We started with a limited line of standard products of [fol. 513] rods, bare and weatherproof wire which has now expanded to cotton, paper, asbestos and glass magnet wire, rubber and plastic construction wires, flexible cords, mining cords and cables, signal wires, control cables, rigid and thin wall steel conduit, high and low voltage overhead and underground cables, and many specialties for various industries and the government."

Now quoting from page 3:

"We sell through our own salesmen and some agents. We have eighteen offices, nine warehouses and almost 300 other stocks strategically located throughout the United States."

I would like to call to the Court's attention a chart which appears on page 4 of this document. It charts a graph of net worth of the corporation from 1936. Net worth appears as somewhat under two million dollars to 1956. As of March 31, 1957—excuse me, sir—that net worth appears at 16 million dollars.

[fol. 514] The document also shows on page 7 sales graph of the company from 1936 when there was sales of \$1,800,000 to sales in 1956 of \$57,000,000.

Quoting again, with the Court's indulgence from page 10:

"In 1956 and 1957 we will have doubled our capacity for production of aluminum rod, have added to our insulating, extruding, cabling and drawing equipment. We will also have facilities for enameling rectangular magnet wire, besides adding capacity in many other lines, particularly in the rapidly growing and less competitive high voltage field."

# Quoting from page 12:

"In the last five years aluminum has become an important base conductor for insulated wire. In 1952 it only represented five percent of our total volume in copper equivalent whereas in this last year it has climbed to almost 25 percent of our total."

Now, the remainder of this group of documents, your [fol. 515] Honor, it was necessary that I discuss that speech separately because it covers the Rome Corporation rather generally. The remainder of this group, that is GX-53 through GX-70 pick up the Rome Corporation in 1950 as it entered into what its executive then referred to as "an aluminum project." These documents are offered to show the increasing importance of aluminum at that time and to reflect Rome's planning to enter the aluminum business. Initially Rome made an expenditure of approximately \$336,000 to install machinery to cast, roll and draw aluminum. This was in the early 1950's, from the start of its aluminum products.

Mr. Bergson: What document is that from?

Mr. Mahaffie: That is from GX-68, the figure is taken from GX-68. Rome's initial planning in this regard, your Honor, as these documents indicate includes right from the start the integration back to the rod stage.

[fol. 516] Now, specifically I would like to call the Court's attention to GX-53, which is the first document we have reflecting the higher echelon corporate planning of the corporation. These are the minutes of the executive committee of Rome dated November 6, 1960. I quote:

"Mr. Rolston reported on expansion plans of seven electrical corporations in the manufacture of aluminum. He also advised of the speed at which this company is drawing aluminum. It was thought that a further study of developments at Southern Electrical Corporation might be made."

I would also direct the Court's attention specifically to

Government's Exhibit 59 which again are minutes of the executive committee of Rome dated September 20, 1951. [fol. 517] And again I quote: "Full consideration was given to the Nichols Wire & Aluminum Company's Properzi continuous casting and rolling unit for aluminum as a result of a visit to Nichols and Southern Electrical. The Engineering Department recommended the Nichols installation. After considerable discussion, upon motion duly made, seconded and unanimously carried, it was

"Resolved, that the Properzi continuous casting and rolling unit for aluminum at an approximate cost of \$125,000 be and hereby is approved; and it was

"Resolved, that aluminum wire drawing equipment be purchased with decision as to whether Vaughn or South-

ern equipment to be made at an early date.

"There being no further business to come before the meeting it was adjourned."

Mr. Bergson: May I be heard on that, Your Honor?

The Court: Yes.

Mr. Bergson: These documents all refer to proposed executive action. They do not indicate the action taken on those proposals.

Mr. Mahaffie: Well, Your Honor, I would only point out [fol. 518] that what I have just quoted from is a resolution

of the Executive Committee-

Mr. Bergson: What is the date of the resolution?

Mr. Mahaffie: The meeting was held on September 21, at 11:10 a. m.

Mr. Bergson: What year?

Mr. Mahaffie: 1951.

Mr. Bergson: And the Properzi machine was put in in 1954.

Mr. Mahaffie: No, I think we are testifying here, Mr. Bergson.

Mr. Bergson: We sure are.

Mr. Mahaffie: Well, I am not testifying.

The Court: Well, I think you are, but it is good, it is very interesting.

Mr. Bergson: Well, neither one of us is under oath either.

Mr. Mahaffie: I believe the Properzi machine was put in prior to 1954.

Mr. Bergson: Mr. Fraser advises me it was 1953, not 1954.

Mr. Mahaffie: All right, sir.

Mr. Bergson: The resolution says what it says, all I am

doing is pointing out the resolution wasn't acted on.

[fol. 519] Mr. Mahaffie: Well, directing the Court's attention to Government Exhibit 60, this is a memorandum from Mr. R. M. Fraser—this is not the Mr. A. D. R. Fraser, it is a much more subordinate executive, to Mr. C. H. Ellis, who is Rome's production manager, manager of its production facilities and I believe also vice-president, dated October 2, 1951: "The estimated cost for capital items under the project of casting, rolling, and drawing aluminum is \$283,530. This is made up of the items in the attached list. There may be a few expense items such as lighting and ventilating change, but they will be of a minor character. The main items of equipment are the Ajax melting and pouring furnace with a capacity of 2,000 pounds per hour. The Properzi casting wheel and rolls, a ten die Vaughn drawing machine."

Now attached to and part of GX-60 is a table which furnishes an estimate—well, it is titled "Aluminum Project, Estimate of Cost," and it furnishes a breakdown of the cost items connected with the aluminum project totalling

[fol. 520] \$283,530. °

I am not going into the table itself at this time.

GX-61 are the minutes of a Rome Engineering and Research Conference held on October 4, 1951, conducted by Mr. Schatzel, who is Rome's Director of Research.

Now, directing the Court's attention to pages 2 and 3, these are two pages of Mr. Schatzel's remarks at this conference, and this is the section headed "Aluminum":

"On the question of aluminum, we are taking a realistic approach. We do not intend to follow either these fanatics who would completely replace copper for all uses or those who would oppose the use of aluminum where it is entirely satisfactory. We shall evaluate the proposed application and make recommendations in agreement with sound technical and practical consideration. In this connection we should remember that the properties of aluminum have not changed with respect to its electrical and physical characteristics. The differences that make aluminum such

an important metal to us at the present time are, first, [fol. 521] economy, second, availability. Copper is still the best metal for electrical purposes when it is available at a reasonable price. For a long term swing we expect that aluminum will replace copper only in places where copper is not really necessary.

"Present planned increase in aluminum production calls for doubling that capacity by 1952 and tripling that capacity by 1954."

Now, skipping about five sentences: "It is expected that many utilities will swing over to aluminum on the basis of executive decisions owing to the economic advantages it presents. In most cases the changeover will be on a 100

per cent basis for a particular application.

We are actively producing increased quantities of insulated aluminum conductors. You can help us by sending in all facts and rumors. We will investigate, correlate and then pass back to you the facts. At the present time some companies are using aluminum in enamel magnet wire, but we do not think aluminum has a permanent place in [fol. 522] this application. For some types of magnet wire it may well have an important and permanent place."

Now, GX-62, 63 and 64 are all documents which relate to a transaction in 1951 between Rome and the Westinghouse Electric Corporation. These documents show that Rome—well, I am not going to try to state what they show or I

will be accused of testifying.

The Court: You will be getting into a good big argument, that is what you will do.

I will read them sometime and see what they show.

Mr. Mahaffie: Let me state that they relate to a transaction by which Rome produced aluminum magnet wire for the Westinghouse Corporation.

The Court: There is probably no dispute about it.

Mr. Mahaffie: No, sir, I am sure there is no dispute about that.

Documents 56, 58, 59 and 70 are all minutes of aluminum meetings, so-called, held by the Rome Cable Corporation. These are meetings of executives. They are dated Novem-[fol. 523] ber 29, 1951, and January 4, January 15, and January 30, 1952.

I am not going to read from those minutes, your Honor. We think they are of considerable interest in showing what is involved or what at that time was involved in getting into this business, and showing how Rome felt about it.

The Court: I assume when we get along to the proper time in this trial we will have evidence of just how far they,

got in and what they did.

Mr. Bergson: If you don't get it in their case, you will get it in ours, Your Honor.

The Court: What's that?

Mr. Bergson: If you don't get it in their case you will get it ours.

The Court: So that while all of this may be interesting proposals, recommendations, I have made a lot of them myself and some of them went through and some of them didn't; some of them were more expensive, some of them were less. These were all right, of course they are. These exhibits, I don't know the force of them.

[fol. 524] Mr. Mahaffie: On the question of capital expenditure, GX-68, we offer to prove the capital expenditure.

The Court: You prove anything you want, but I assume

the proof of these things-

Mr. Mahaffie: Excuse me, your Honor, that exhibit is not a proposal. That is proof of the expenditure, GX-68, and that is our proof of the initial capital expenditure.

The Court: Perhaps.

Mr. Mahaffie: In that year.

Mr. Bergson: Which will be rebutted later on.

The Court: Yes.

Mr. Mahaffie: Well, I am going to offer at this time another group of documents which have been marked Government's Exhibits 71 through 78 for identification. I offer these documents in evidence.

Mr. Bergson: No objection.

The Court: I will receive them.

(Documents were marked Government's Exhibits 71 through 78, in Evidence.)

[fol. 525] Mr. Mahaffie: Your Honor, these documents GX-71 through 78 relate to the same matter with respect to ALCOA as the previous group with respect to Rome.

Now the previous group showed that Rome in 1950 and 1951 was planning its entry into the aluminum wire and cable business. Now at the same time ALCOA was planning an expansion of it- own aluminum wire and cable facilities.

In 1952 ALCOA determined that this field was too difficult a field for its immediate entry and as a result it entered into the tolling agreement with Rome which has been discussed in connection with some earlier Exhibits.

Now this group of documents show some of the circumstances surrounding the ALCOA-Rome tolling agreement.

As I pointed out the agreement itself and one or two amendments have gone into evidence as GX-28 through GX-31. We think that this tolling agreement is of considerable importance in that it was the actual vehicle by which both ALCOA and Rome went into this business, it assisted Rome in getting into the aluminum business and [fol. 526] assisted ALCOA in getting in the business.

The Court: What's wrong with that?

Mr. Mahaffie: Nothing wrong per se.

The Court: What conclusion do I draw from all these things and how does it affect it? The ultimate proposition I suppose is to determine the lines of commerce involved, the relevant markets and its effect on competition.

Mr. Mahaffie: Yes, sir.

The Court: Now all of this is interesting and perhaps indirectly is important. I don't know. These anti-trust suits have a tendency of getting way out into the hinterlands. I don't think it makes very much difference whether Rome decided to get into the aluminum business because of Southern Electric Company's success or failure or whether they decided to get into it as a gamble on a horse race. What difference does it make, they are in.

Mr. Mahaffie: I will point out where it does have, the tolling agreement does have relevance. The tolling agreement was still going on in part at the time of the merger.

Now we will offer evidence to establish this.

[fol. 527] The Court: Somebody else had an agreement with Kaiser. It is still going on. What of it?

Mr. Mahaffie: This is what I am getting at, Your Honor. In 1955 ALCOA undertook to do part of this work itself. If this merger had not gone into effect this tolling agreement in about I estimate two years would have been a thing

of the past, ALCOA would have been in this business on its own, Rome would have been in the business on its own, there would have been no tie between the ALCOA and Rome products.

Now one of the factors which is important in these

cases-

The Court: Your guess may be better than mine, but I don't know how much better.

Mr. Mahaffie: This is not a guess.

The Court: Yes, it is a guess, you just told me it was a guess, you told me you estimated it would be out of business in two years.

Mr. Mahaffie: Two years is the estimate.

The Court: That is what I say, I say I don't know whether your guess of two years is right or my guess of one [fol. 528] year or somebody else's guess of three years.

Mr. Mahaffie: Well, just to sum it up, I think this evidence goes to the question of competition.

The Court: This evidence is background, and that is all it is, isn't it?

Mr. Mahaffie: It is background in a sense. It is also relevant to the line of commerce.

The Court: Perhaps.

Mr. Mahaffie: It is relevant to entry-we think it has relevance-

The Court: I have taken the Exhibits, counsel, I think you misstate what I am talking about. What I am saying here is that, sure, I am taking this stuff because I think it is perhaps historical and helps me maybe to evaluate it in some way, but it seems to me that it is over-detailed as an anti-trust suit tends to become, over-detailed, because after all when you get down to the decision you have got to take what the facts are, not what somebody estimated something was going to be in 1951.

Mr. Mahaffie: I certainly agree with you there, sir. [fol. 529] The Court: That's all, you and I are holding hands, we are all right.

I don't urge you to change your future Exhibits, but I just thought it would be wise for everybody to understand my present feeling about them. I think it is over-detailed because fundamentally you have got to get down to something you can put your finger on, not what some engi-

neer said in 1951 about what he proposed to do or what he was going to investigate. That is all very interesting. I don't care whether he investigated it or not, the fact is he is in it. If he went in it without investigation I suppose it don't change this law suit one bit.

Mr. Bergson: I think this points up one of the difficulties of shoveling Exhibits into evidence like this without a wit-

ness.

The Court: It does, but I guess I won't change the course of the world. I feel better after expressing my opinion about it.

Mr. Mahaffie: If the Court please, this is the only method we had of proving these facts.

. The Court: I am not finding a bit of fault with you.

[fol. 530] Mr. Mahaffie: I know.

The Court: All I am trying to tell you is that, sure, putit in. I have taken it. It is just what I said before, when you get down to the essence of it it is not what an engineer thought in 1951, it is what he did that is going to be of some importance.

Mr. Mahaffie: Yes, sir, and what he did is what we are

proving.

The Court: Yes. Quite a little of what you mentioned is what he thought, but it is all right, I am not going to pay much attention to it though.

Mr. Mahaffie: I appreciate your comments on that.

The Court: I will see if I can find out what he did and what was the result of his doing, that is what it seems to me I am interested in.

Mr. Mahaffie: That is what we are going to try to show.

The Court: I know.

Mr. Mahaffie: Well, if I can conclude this group, GX-71 through 78.

The Court: Yes.

[fol. 531] Mr. Mahaffie: The first two, 71 and 72 are effered because they—this frankly is a bit of background, but I think it is relevant background because they detail an inspection trip made by ALCOA to the Rome plant, and once again, sir, they demonstrate the nature of this business, facts we think are relevant today and relevant to this lawsuit.

76 and 77 I also call to the Court's attention. They are

press releases issued by both ALCOA and Rome in 1952 setting forth in rather clear and simple language just how the tolling agreement did work.

We have put the agreement itself in, but these releases

sum it up in a much simpler form.

The Court: Mr. Mahaffie, if you are going to start a new group, I guess we will quit.

Mr. Mahaffie: All right, I finished with this group.
The Court: We will recess until tomorrow morning at
10:00 o'clock.

(Whereupon, at 4:50 o'clock p.m. the recess was taken to Friday, February 9, 1962 at 10:00 o'clock a.m.)

[fols. 532-533]

[Title omitted]

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[fol. 534] The Court: All right, gentlemen.

#### OFFERS IN EVIDENCE

Mr. Mahaffie: May it please the Court, at this time I am going to offer into evidence two more groups of documents, your Honor. The first group, consists of documents which have been marked as GX-79 through GX-137. I offer GX-79 through 137 in evidence.

Mr. Bergson: No objection, your Honor.

The Court: All right.

(Government's Exhibits 79 through 137 for Identification received into evidence.)

Mr. Mahaffie: Your Honor, this group of documents, which is a large group, follows the Rome Corporation from its entry into the tolling agreement with ALCOA which I discussed yesterday, as it expanded and developed its aluminum business through the date of the merger. The tolling agreement introduced Rome to the production of aluminum. These documents show Rome proceeded individually under the tolling agreement and independently in the development of its aluminum program. They also show a considerable amount of planning for the future development of Rome, which we think rather significant in view of the elimination [fol. 535] of Rome in 1959.

I am not going to call any specific documents to the Court's attention at this time unless Your Honor desires it.

The Court: No, unless there is something particularly significant, then do it. What I said yesterday, gentlemen, don't take too seriously. This is just a personal opinion. I think these anti-trust lawsuits grow and become too cumbersome. In other words, I could not stop the defendant from taking every one of them and going in and explaining what happened, at least those that you had yesterday, and I hope they don't do it. You can see I can't stop them. I

think maybe the time in anti-trust has arrived when we don't need twenty-five pages of congressional history in each of these decisions, and fifty more pages on the social development.

I think we ought to begin in this case to get down to what

actually has happened.

Go ahead.

Mr. Mahaffie: Your Honor, the next group of documents consists of documents which have been marked as GX-138 through GX-156 for Identification. I offer Government's [fol. 536] Exhibits 138 through 156 in evidence at this time.

Mr. Bergson: No objection, Your Honor.

The Court: All right.

(Government's Exhibits 138 through 156 for Identifica-

tion received in evidence.)

Mr. Mahaffie: This group, your Honor, is similar to the last group except it follows ALCOA in its development beginning, in these documents beginning with 1955, which was the time that ALCOA first began to enter the covered aluminum conductor business on its own, that is independently of the Rome arrangement. The first step in this direction was the production in 1956 of polyethylene covered conductors. The acquisition of Rome prevented ALCOA from planning to install facilities to produce the second principal type of covered conductor, which is neoprene.

[fol. 537] And once again, sir, I am not going to point out specifics in these documents to the Court at this time.

Thank you.

MINOT H. PRATT, a witness called on behalf of the Government, was duly sworn and testified as follows:

Direct examination.

# By Mr. Wertheimer:

Q. Will you state your full name and position?

A. Minot H. Pratt. I am Vice-President and Chief Engineer of Niagara Mohawk Power Corporation.

Q. How long have you been with Niagara Mohawk Power,

A. Since its incorporation about ten years ago, and prior to that with predecessor companies for a total length of time of about 36 years.

Q. What are your responsibilities in your present job?

A. I am in charge of all design, specifications for new construction of our facilities.

Q. Does that include the design of transmission and distribution lines?

A. It does.

Q. Does that include the choice of the conductor for such transmission and distribution lines?

A. It does.

[fol. 538] Q. Have you any academic degrees, Mr. Pratt?

A. I have a degree in Mechanical Engineering from the University of Pennsylvania and I am a licensed professional engineer in the State of New York.

Q. Now I would like you to generally describe the

Niagara Mohawk Power system for the Court.

- A. Well, the Niagara Mohawk Power system provides inthe electrical field electrical power and energy to customers in an area extending generally from the western
  boundaries of the State to the eastern boundaries of the
  State in upper New York State, exclusive in that area of the
  so-called southern tier counties, including Binghamton and
  Elmira and that area, and extending northerly to the boundaries of Lake Ontario and the St. Lawrence River, excluding on the northern boundaries the area around Rochester
  and an area in the northeastern section of the State. Other
  than that, within that area Niagara Mohawk gives the service, that is its territory. It is a system which can be
  measured in size by the demand electrically placed upon
  it which at the present time is approximately three million
  kilowatts.
- Q. About how many customers do you have for electric-

A. A little over a million.

Q. Are any cities included in your system? [fol. 539] A. Yes, many cities.

Q. Could you name a couple of the larger ones?

A. The larger ones would be Buffalo, Syracuse, Utica, Albany and Watertown.

Q. Have you rural areas in your system?

A. Yes, all of the rural areas within the general territory which I previously described.

Q. I wonder if you would give the Court a general de-

scription of an electric power system?

A. Well, an electrical power system is a system which takes energy in some other form than electrical to start with, that is its raw material as it were, and converts it into electrical form and thereupon moves it in electrical form to the user.

The first stage in the process, of course, are the facilities which takes the energy in its non-electrical form as a raw material, energy in water or other fuels, and converts it into electrical form. These are what we speak of as the generating plants.

From the generating plants it is started on its journey to the ultimate consumer, ordinarily from a generating plant in relatively large amounts through the medium of what we speak of as transmission, which are generally high voltage lines because of the large amount of power [fol. 540] transmitted for relatively longer distances.

When it reaches the point where it is relatively near a utilization area, such as Utica, its voltage is reduced, it is split up or subdivided into lesser quantities but still fairly substantial quantities, and further transmitted over what we speak of of subtransmission or medium voltage lines to the next point in its journey which is the point where it is again reduced in voltage, split up into smaller quantities and further distributed now over what we call distribution lines to points close to your homes or factories where it has its final transformation to the voltage used in the factory or home, and where the energy is changed from its electrical form to the form in which it is ultimately desired, as illumination, heat, or mechanical power or whatever other form you may wish.

Q. Directing your attention, sir, to your transmission lines, what conductor do you use overhead?

A. Today we use aluminum exclusively.

Q. Why?

A. Because it is more economical.

Q. Are there any other reasons for using aluminum in overhead transmission?

A. Yes, in overhead transmission aluminum has many

[fol. 541] advantages other than the particular relative price of the material itself. Aluminum in the ways in which it can be made, aluminum core reinforced wire is stronger than copper and enables you to build transmission lines or any long span lines, including long span rural distribution lines, enables you to build any long span lines with lesser numbers of towers, or lower towers. Therefore, you use less insulators and therefore it is a more economical overall cost.

So it has advantages other than specific price in the field of application to transmission, and that has been the case for some time which is the reason it is essentially the only thing used today for such lines.

Q. Will you explain corona to the Court?

A. Well, when you get into very high voltage—well, first corona is a breakdown of the air surrounding a conductor due to the electrical pressure carried by the conductor and it occasions a loss. As the voltage goes up this loss will increase for a given conductor size, and to reduce it you can increase the conductor size to bring it back within the range that you may wish. So that as you go up in voltage larger conductors have—that is one of their advantages—size advantage of large conductors in extra high voltage transmission lines, size is an advantage.

# [fol. 542] By Mr. Wertheimer:

Q. Would you compare aluminum and copper in regard to corona?

A. Well, aluminum inherently has greater size for a given conductivity and a given carrying capacity and therefore inherently having a larger size tends to give you a better corona effect with less loss condition. It is helpful.

Q. Would this be any advantage to aluminum in trans-

mission?

A. Yes. At high voltages particularly, yes. In intermediate voltages it is not material.

Q. Directing your attention now to overhead distribution,

what type of conductor do you use?

A. For all new construction today and major rebuilds we use aluminum in one form or another.

Q. Are you speaking now of bare or insulated or covered or both?

A. Both. Both bare and covered.

Q. What are the reasons for this decision?

A. It is more economical in overall costs to do so, to use aluminum.

Q. How long have you been in aluminum in overhead distribution?

[fol. 543] A. Well, there isn't any time that you suddenly change from one thing to another. It is a gradual change. But we work largely under standards and our standards now call for aluminum exclusively. They called for aluminum to a major degree, for the first time approximately ten years ago.

Q. Do you anticipate any switch to copper for overhead

distribution?

A. I don't, no.

Q. What type of conductor do you use for service drop on your system?

A. Aluminum.

Q. What construction?

A. That is for all new construction. Well, it is covered ordinarily and aluminum. It may be single wire or it may be what is known as triplex, which is a combination of three wires, one bare and two insulated rolled up together.

Q. Now, what proportion of your service drop is this

triplex construction?

A. A very large proportion. I couldn't give you a figure.

Q. Where do you use the triplex? Is there any use which differentiates the single wire from triplex?

[fol. 544] A. Well, triplex is used largely for services but also to some extent for secondaries and multiple street lighting. Essentially for services.

Q. Do you put triplex in one part of your system and the

single wire in another?'

A. No, we generally use triplex today.

Q. I see.

A. For all new constructions I said, generally. There may be exceptions.

Q. Directing your attention to your underground system,

what conductor do you use?

A. For underground we use copper.

Q. In transmission and distribution?

A. That is correct, yes.

Q. Would you explain that to the Court?

A. Well, where aluminum has advantages aside from price and is in transmission overhead. Underground, aluminum, aside from price has only disadvantages. Because of its greater size for given conductivity it requires more insulation. Insulation is expensive. So the non-conductor part which is a material part in cables where the costs concerned have increased. Its greater size tends to require [fol. 545] larger ducts which are expensive, so it has no inherent advantage in use for underground cable. In fact, it has inherent disadvantages which to bring it into overall economic price, would have to be disadvantages. It is difficult to do and is inaccurate as yet, other than for experimental use during the war and for power cable.

Mr. Wertheimer: Thank you.

Cross-examination.

## By Mr. Adler:

Q. Mr. Pratt, in your testimony referring to the bare transmission cable used in your system you stated that there were technical advantages to aluminum in addition—

A. Yes.

Q. -to the cost part in the cable itself.

A. Yes.

Q. Referring now to the insulated or covered conductors used in your distribution system, are there comparable technical advantages that aluminum has over covered or insulated copper?

A. Aside from long span lines, no, I wouldn't say so.

[fol. 546] Q. In your system prior to about ten years ago then you used in your overhead distribution lines, where you used the covered product copper rather than aluminum?

A. Largely, yes.

Q. Was there any problem from a performance standpoint?

A. No.

Q. Is it fair to say then that your decision to standardize on aluminum with respect to covered or insulated conduc-

tors was based on the cost of the conductor itself, of the cable?

A. That is correct.

Q. And if this cost relationship were to reverse you could return to copper without any loss from a performance

standpoint?

A. Yes, from a performance standpoint, one is equivalent to the other. If it were to change and we were convinced it was a change you could depend on, we would go back for the same reason we went to this one.

Q. Do you still have covered or insulated coppers in your

system?

[fol. 547] A. Oh, yes, indeed. We don't go out and change the ones that exist. We have a lot of them.

Q. And when you have to replace segments of the existing copper covered cable what do you replace it with?

A. It depends on the extent of replacement. If it was a major rebuild, it would be aluminum. If it was a minor, we would replace it with copper.

Q. Now, referring to the service drop, service drop is the

connection from the pole to the building?

A. From the last transformer to the customer, let's say.

Q. You testified that in your system there are several types of construction used for that service drop.

A. You may have one or two of three separate wires or you have wires combined and wrapped together, which I mentioned as triplex. That is all.

Q. Do you also use in your system a single cable, an SD

type cable?

A. I couldn't tell you. I am not familiar with what you mean by the words "S.D."

Q. To your knowledge, then, the principal types of service drop you used in your system would be the single cable [fol. 548] wound together?

A. Today would be what we speak of as a triplex. It is an ACSR conductor with two aluminum conductors, sometimes ACSR and aluminum and insulated wrapped around a bare conductor.

Q. And the other type of construction used in your system would be the three wires or an open wire!

A. Yes But that is not prevailing today for new construction, The triplex is.

Q. For example, when a new residence is built in an area in which an open wire service drop construction is used, what would you use in that case!

A. Well, you could not answer that categorically. It would depend on what your plans were for the area and whether it was one house or many were involved, and what the probabilities were for others. You probably if you were going into changes in the area use triplex. If it was just a single replacement of a house where you had single conductors, you would keep up your single conductors.

Mr. Adler: All right, thank you.

Mr. Wertheimer: No further questions.

(Witness excused.)

[fol. 549] Mr. Mahaffie: If your Honor please, we offer four more groups of documents. I can get through this very rapidly.

The Court: You can probably get through them more

rapidly than I will.

Mr. Mahaffie: I want to point out that I will have some appropriate point later in the proceedings either through submission of findings or otherwise point out.

The Court: All right.

Mr. Mahaffe: (Continuing) —the portions of this that we regard as particularly relevant.

The Court: All right.

#### OFFERS IN EVIDENCE

Mr. Mahaffie: The first group is a group of documents which has been marked as Government's Exhibits 157 through 167 for identification. I offer GX-157 through 167 in evidence at this time.

Mr. Bergson: What do they relate to, Mr. Mahaffie?

Mr. Mahaffie: Off the record or on the record?

[fol. 550] Mr. Bergson: Any way.

Mr. Mahaffie: I will make my statement on the record if you want. These documents, your Honor, relate to the attempts by Alcoa in 1957 and 1958 to acquire a manufacturer of wire and cable. The first document or the first in the group relates to an unsuccessful attempt in '57 to acquire Rome. After that attempt fell through

Mr. Bergson: All right. I know what they are and I have no objection to them.

Mr. Mahaffie: I offer GX-157 through 167 in evidence.

The Court : Received.

'(Government's Exhibits 157 through 167 for identification received in evidence.)

Mr. Mahaffie: To continue, your Honor, that attempt fell through. Alcoa then began looking for another company. This process lasted until the late or until the fall of 1958. [fol. 551] Mr. Bergson: This is not a description of documents, Your Honor, this is argument.

The Court: It doesn't shock me at all. Suppose somebody goes out to purchase something, whether it is a house, business, grocery store, whatever it is. They may be unsuccessful at first. They continue looking and finally they find it.

Mr. Mahaffie: I am trying to describe what is in the documents. I am not arguing on these documents.

The Court: Go ahead.

Mr. Mahaffie: The process ended with the successful acquisition of Rome on March 31, 1959.

The Court: All right.

Mr. Bergson: What documents are these now, 157 to 167?

The Court: Yes.

Mr. Mahaffie: The next group of documents have been marked as Government's Exhibits 168 through 179 for identification.

I offer Government's Exhibits 168 through 179 in evidence at this time.

Mr. Bergson: No objection.

[fol. 552] The Court: I will receive them.

(Government's Exhibits 168 through 179 for Identification received in evidence.)

The Court: Tell me briefly what they are.

Mr. Mahaffie: Yes, sir. Government Exhibits 168 through 179, Your Honor, represent the program, the internal program which the Government contends ALCOA would have followed to expand into the wire and cable business if it had not acquired Rome.

The Court: All right.

Mr. Mahaffie: It consists of a series of internal memorandums, internal within the ALCOA corporation. The next group, your Honor, is a group of documents which have been marked as GX-180 through 187.

I offer GX-180 through 187 at this time.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibits 180 through 187 for Identification received in evidence.)

Mr. Mahaffie: These documents, your Honor, are press releases and certain internal memoranda at the time of the merger. They demonstrate certain generally unrelated facts about the merger which we will bring to the Court's [fol. 553] attention.

The Court: All right.

Mr. Mahaffie: The last group which I want to offer at this time, your Honor, have been marked as Government's Exhibits 189 through 202. I am not offering at this time the document which has been marked as Government Exhibit 188. So I offer at this time documents marked as Government's Exhibits 189 through 202 for identification into evidence.

Mr. Bergson: No objection.

· The Court : Received;

(Government's Exhibits 189 through 202 for Identification received in evidence.)

Mr. Mahaffie: These documents, your Honor, relate to two subjects, they relate to what we will contend is the dominance of ALCOA in the field of aluminum electrical conductor, and they relate to the difficulties of non-integrated independent manufacturers in competing with ALCOA.

The Court: All right.

Mr. Melchior: We will call the next witness, Your Honor. Mr. Fosdick.

[fol. 554] ELLERY R. FOSDICK, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Melchior:

- Q. Would you state your name and occupation?
- A. Ellery R. Fosdick, consulting engineer.
- Q. Where do you practice, Mr. Fosdick?
- A. My headquarters are in Washington, D. C.
- Q. What field of engineering do you practice?
- A. The field of electric power.
- Q. Would you elaborate a little bit as to what you mean
- by the field of electric power?
- A. My work is primarily in connection with the electric utility industry, involving the generation, transmission and distribution of electric power.
  - Q. How long have you been a consulting engineer?
  - A. Approximately six years.
  - Q. What type of activity did you engage in before that?
- A. I have been engaged in a number of capacities as an engineer during the last thirty-seven years since graduating from college, most of which related to the electric power field?

Prior to my consulting work I was engaged for five years as construction engineer with the U.S. Atomic Energy

[fol. 555] Commission in Washington, D. C.

Prior to that I was with the U.S. Bureau of Reclamation as Assistant Director of Power for approximately five years. Prior to that I was an engineer with the U.S. Federal Power Commission for approximately seven years.

Q. What is your educational background, Mr. Fosdick?

- A. I received a Bachelor of Science degree in hydro-electrical engineering in 1924 from Washington State College. I am a Fellow and Member for Life in the American Institute of Electrical Engineers, and registered as a professional engineer in the District of Columbia.
- Q. Would you keep your voice up at a level so the Courtcan hear it, and you might face the Court when you answer the questions.

From your education and experience, Mr. Fosdick, are you familiar generally with electrical conductors used by electric utilities for power supply !..

Q. Have you been retained by the Anti-Trust Division of the Department of Justice to render engineering services in respect to this proceeding?

[fol. 555a] A. I have.

Q. In general what have been the nature of the services

you have performed in this connection?

A. These have consisted primarily of making a survey and study to determine the extent to which electric utilities in the United States use aluminum and copper conductor for overhead electric lines and underground electric cable. [fol. 556] Q. Have you incorporated the results of your survey and study in a report?

A. I have.

Q. Would you identify it?

A. Government Exhibit 468 for identification, entitled:

"Report on the use of copper and aluminum conductor for overhead electric lines and underground cables by electric utilities in the United States for the years 1950, 1955 and 1959. \*\* .\*

Q: What was the purpose of this study?

A. Well, the purpose of the report is to show the extent to which aluminum and copper conductor is used for gross. additions to overhead electric lines and underground electric cables in the United States.

Q. Now was all the information that is set forth in this report prepared by you personally or under your direct su-

pervision?

A. It was.

Q. Now you used the term "gross additions," what do

you mean by that term?

A. Gross additions are additions to electric plants as a result of new construction and exclude replacements of conductor used for maintenance.

Q. Why did you use gross additions as your unit of measurement?

[fol. 557] A. Gross additions represent the new conductor that is added to an electric utility system. I have excluded the conductor used for maintenance because the type of conductor used for maintenance is governed primarily by the type of conductor that is being repaired, whereas gross additions is determined by the engineer who feels what should be installed for new installations.

Q. Would you explain to the Court generally, Mr. Fos-

dick, how you conducted this survey?

A. Yes. Questionnaires were sent to 93 electric utilities in the United States, which had been selected as representative of the electric utility industry. Information received from these utilities has been used in making the report.

Q. Now were these questionnaires prepared by you?

A. Yes.

Q. Were they reviewed by anyone in the anti-trust division that had an economic or statistical background?

A. They were reviewed by a government economist with statistical training and experience who was assigned to this case at that time.

Q. What type of information did you request in these questionnaires or schedules?

[fol. 558] A. Four schedules were sent to the electric utilities. Schedule 1 requested information regarding gross additions of overhead electric conductor for each of the years 1950, 1955 and 1959. It was requested that the information be supplied for both transmission and distribution conductor, indicating the usage of copper and aluminum conductor in each case.

Schedule 2 requested similar information for underground electrical cable. All of the information requested in schedules 1 and 2 was purely factual and objective in nature, and no opinion was called for. Schedules 3 and 4 requested certain information relative to the expected use of aluminum and copper by the utilities in the future, and also regarding the restrictions in use of conductor. However, the information received in response to 3 and 4 was not susceptible to tabulation and was not tabulated in this report.

Q. You did tabulate the information from questionnaires 1 and 2 but not from 3 and 4.

A. That is right.

Q. You selected the years 1950, 1955 and 1959 as the three years of your survey; why did you select those years?

A. It was felt that a period of approximately ten years [fol. 559] was desirable to show a trend in the use of conductor, and this period 1950 to 1959 was the latest period of time for which the information was available. Instead of using ten years I used nine years, starting with the even year of 1950.

I took three different years during this period because this was the minimum that could be used in establishing

a trend.

Q. Now how many utilities did you say you selected?

A. 93.

Q. Now did you consider the 93 utilities that you selected as representative of the electric utility industry in the United States?

A. I do.

Q. Would you state your reasons?

A. The electric utilities selected are considered to be representative of the electric utilities in the United States because utilities were selected from all parts of the United States, utilities were selected from the privately owned sector, the publically owned sector and from rural electrical operators. Utilities of all sizes were selected and the utilities selected served over half of the ultimate consumers in the United States.

Q. Now what form does your report take, Mr. Fosdick? [fol. 560] A. In my report I give a summary of findings, findings in detail, and in appendices I set forth the procedures followed in making the survey.

Q. Did you get a response from all 93 utilities?

A. Yes, I did.

Q. Do you have in your possession copies of the schedules, the completed schedules that you sent to these utilities and received in response to your request from them?

A. Yes, I have, and I understand copies have been made

available to the Defendant sometime ago.

## OFFERS IN-EVIDENCE

Mr. Melchior: The Government offers at this time Government Exhibit 468 for identification.

Mr. Bergson: Your Honor, this Exhibit 468 is based, as Mr. Fosdick stated, on returns of 93 companies. So far as

Mr. Fosdick is concerned everything in the Exhibit is hearsay. I think certainly as a pre-requisite of admitting the report that the returns themselves should be offered in evidence.

The Court: Well, of course, the returns themselves, I suppose, are the basic documents upon which the report is based. Now they certainly should be received in evidence. They probably were made available to you, were they? [fol. 561] Mr. Bergson: Yes, but I would like to have them made available to you.

Mr. Melchior: The Government is willing to have them go into evidence. We are trying to keep the size of the record down. Does counsel have any objection to any partic-

ular one of the schedules?

Mr. Bergson: No, I just think since this report, which is a survey report and which is normally recognized I concede when properly conducted, and I concede this was properly conducted is based on an exception to the hearsay rule, but in basing the exception to the hearsay rule I think it is required that the basic documents should be put in evidence.

The Court: That is probably true,

Mr. Melchior: We will be glad to mark them. Can we make arrangements to mark them later?

Mr. Bergson: I want to use them in Cross Examination.

## [fol 562] By Mr. Melchior:

Q. Would you have the ones we used as the original?

A. I don't have them with me here, they are in the file.

Mr. Melchior: We will have those later.

Mr. Bergson: Why don't you mark those as Exhibit 469.

Mr. Melchior: We will mark it 468A, I think,

Mr. Bergson: All right. Supposing you offer it now and have it received now without physically offering it.

The Court: All right.

Mr. Melchior: The Government will at this time offer Government Exhibit 468A for identification.

The Court: Which are the basic reports upon which Exhibit 468 is based.

Mr. Melchior: That's correct, Your Honor.

The Court: They are foundation documents for 468.

My. Melchior: That's correct. Now these, Mr. Bergson, are copies. Do you have your own copies to use?

Mr. Bergson: Yes.

[fol. 562a] Mr. Melchior: Then you won't need these and we will see that the originals are properly marked at a later time.

The Court: All right. I will receive both of them, Exhibit 468 and 468A.

(Government Exhibits 468 and 468A for identification received in evidence.)

[fol: 563] By Mr. Melchior:

Q. Now, Mr. Fosdick, would you state in general what the result of your survey was, what conclusions have you drawn?

A. The results of the survey can be stated very simply and very easily despite the fact that it covers quite a lot of work in between.

Q. Perhaps we should begin by indicating the questions that were asked of the utilities that were surveyed and then you can explain what results or what your conclusions were.

Mr. Bergson: Off the record.

(Discussion was held off the record which the reporter was asked not to take.)

A. I might refer first to Schedule 1, which is in the very back of my report, the third from the last page in the book. Schedule 1 requested in thousands of feet the gross additions of overhead electrical conductor of electrical utility plants for each of the years 1950 to 1951. This is for all the electric line in two general categories.

Namely, transmission and distribution. And under distribution I asked for that information divided between bare

conductor and insulated or covered conductor.

[fol. 564] Now, I requested it for copper and aluminum in each case, for each of those years. And the schedule, of course, would contain the name and address of the utility and was to — signed by some officer of the utility indicating his fitle and the date of submission.

B

course, in the case of distribution cable there was no need for asking for bare conductor because there is no bare underground distribution. And subsequently "2" applies to underground cable. And so I asked for the amount of copper and aluminum transmission underground cable and copper and aluminum distribution underground cable.

The returns from these giving the amount of conductor data as gross additions have been used in determining the data that I am about to refer to. I might state briefly

how that data was used. It is very simple, of course.

The reports were given in thousands of feet of conductor and all that was necessary as far as my work and study was concerned was to determine the percentage of aluminum and percentage of copper conductor in each category for each year. Taking the thousands of feet as a basis and computing the percentage even at those figures. As a result [fol. 565] of this work there are a few very simple and general conclusions that can be drawn.

The first one that I have drawn is that aluminum conductor was a dominant conductor used in 1959 for gross additions of overhead electric lines for the electrical utilities that supplied information on these questionnaires. The percentage of aluminum used in 1959 for overhead electric

lines was 80.1 per cent. .

My second conclusion is that a continuing trend for an increasing use of aluminum conductor for gross additions to each of the three major categories for overhead electrical lines that I mentioned a moment ago in regard to Schedule 1, occurred over the period from 1950 to 1959 inclusive. In other words, transmission conductor, bare distribution conductor and covered and insulated conductor showed a continuing trend as over the use of aluminum conductor during that period.

The trend for increasing use of aluminum conductor for a transmission electric lines was found throughout the United States in all seven geographical regions. It was not identical in all geographical regions but it was up as a whole

throughout all the regions generally.

[fol. 566] That covers, I believe, the most important aspects of my findings for overhead conductor.

Now, in the case of underground conductor, copper was

the dominant product used in 1959 for gross additions and was manufactured for 97.7 per cent of those additions. Furthermore, as a result of the information received, there appears to be no appreciable trend away from the use of copper conductor for underground cable. There was a small amount used in 1955 and in 1959, but based on the information supplied by the utilities they seemed to have little, if any, intention to use increasing quantities of aluminum conductor for underground cable. That summarizes and, I believe, gives fairly completely the facts which can be derived from the information supplied by the utilities that we sent questionnaires to.

Q. Now, in the findings part of your study, Mr. Fosdick, am I correct in saying that you have given more detail with respect to each of the conclusions you have drawn and you have implemented it by a series of charts and pictograms; is that correct?

A. Yes. I have shown more detail of this giving ratios and also charts that show the percentages.

[fol. 567] Q. And these charts and graphs are based upon statistics which you have compiled by these schedules and which are contained in your study; is that correct?

A. Yes.

Q. This document is complete on its face, then, and all the information contained herein of a statistical nature you have secured from your schedules?

A. Yes.

Mr. Melchior: You may examine.

The Court: Just before you start, one question. Is there any way in determining whether or not the amount of underground conductor, whether that has increased in these years? What I am getting at is this: Are you putting in more and more underground transmission and distribution lines?

The Witness: Your Honor, that, of course, is shown in the return. They did show the amount of conductor that was put in underground.

The Court: Yes, but-

The Witness: And, while, of course, it is not large compared with overhead line, there has been a continuing addi-

tion to the underground system over the period of time

that my report covers.

[fol. 568] The Court: I am just wondering if there isn't a tendency, being just a layman here, to reflect that there is more underground transmission or distribution conductor used now in proportion to the utilities or the total amount than there was in 1950?

Is there any way of determining that?

The Witness: Of course, that could be determined, Your Honor, but let me point out that all of this data can fluctuate in total amount from year to year.

The Court: Yes, I understand that, but here is what I am getting at. It seems to me as I read the newspapers—

The Witness: Yes.

The Court: (Continuing)—and perhaps observing, that there is more of a tendency in towns, communities, cities in requiring that you put your distribution system under ground.

The Witness: Yes. I understand the nature of your ques-

tion now.

The Court: That is what I am getting at. Is there any

way of measuring that?

The Witness: No. These reports certainly do not disclose [fol. 568a] that. I can only give you an opinion from studying the returns and talking to utility men.

The Court : All right.

[fol. 569] Cross-examination.

### By Mr. Bergson:

Q. Mr. Fosdick, before getting into the detail of your report to the minor extent that I intend to get into it, I would like to ask you a preliminary question, and that is in view of your qualifications as a professional engineer, whether copper conductor is available, price aside, to perform the same functions that aluminum conductor performs?

A. If I understand the import of your question, Mr. Bergson, the answer is yes.

Q. Dollars aside?

A. Yes. Copper conductor is an equally good conductor

of electrical power as aluminum, leaving out the physical characteristics which may make it more advantageous than the other.

Q. But for the transmitting of energy from the generating plant to the transmission station to the distribution station to the sub-station to the point of end use, you can use copper just as well as you can use aluminum, and for many, many years copper was the only metal that was used?

A. That's right.

[fol. 570] Q. For such transmission purposes?

A. That's right.

Q. Now, I notice that you divided the country into seven regions in making this survey.

A. Yes:

Q. Those are the seven regions I assume that are used by the Federal Power Commission?

A. That is correct, sir. I think I refer to that in the appendix in this report.

Mr. Bergson: Do you have a copy of this, your Honor? The Court: Yes.

Q. Table 1 which I have, well, it is page 10,' of your survey sets out what has happened in a representative capacity using these 93 utility companies out of, how many are there in the United States anyway?

A. I was afraid you would ask me that. There are 3,300

some odd electrical utilities in the United States.

Q. So this represents in number of utilities about one percent?

A. Infinitesimal.

Q. But on total carrying lines——
[fol. 571] A. The number of customers is almost 62 to 63 percent.

Q. I am not questioning the validity of the percentage. Now, I hate to take your time to do this, and I think the survey probably does do it, but the areas involved in Region 1, that is the northeast section of the country?

A. Yes, sir. For the information of the Court, if you look in Appendix B you will see the states and the companies

listed by regions.

Q. Right. Now, which of these seven areas would you say embraced areas which were affected by a substantial de-

gree by this salt water corrosion problem that we heard talked about here in the last several days?

A. Well, I wouldn't—may I answer the question slightly differently than you asked it. I don't believe that any region would be affected to a substantial degree because even in those utilities that have a salt water corrosion problem it is only a minor part of their conductor that is involved. But all of these regions that border on either the Atlantic or Pacific Ocean have some conductor exposed to salt water.

[fol. 572] Q. Let's see. Region 1 is the northeast. That has some?

A. Yes, sir. Region No. 2 does not.

Q. Region No. 2 does not. Region No. 3, north central; does not?

A. That's right. Region 4 and 5 do.

Q. 4 and 5 do: Region No. 6?

A. Does not.

Q. Region No. 7?

A. Does.

Q. Now, directing your attention to the year 1959 on Region No. 2, well, let's take each one, Region No. 1 shows 77.9 percent aluminum on covered and insulated conductor. I am only going to take your time on covered and insulated because we have conceded that aluminum is a separate line of commerce for ACSR and bare.

A. Might I interject, Mr. Bergson, a comment, as you get into these percentages, first the number of utilities in each region is probably small enough there that the result region by region are distorted somewhat. That is why I prefer answering on national total rather than regional total.

Q. I don't follow that, Mr. Fosdick, because if each region [fol. 573] is distorted a little bit it would seem to me the entirety would be distorted a lot more.

A. No. If you only have a few utilities, which each region has, only relatively few, the construction problem in any one year would alter the results somewhat. But taking all the regions together the weighted average for these regions then represents something that doesn't vary from year to year—

Q. But what we are talking about here, as you well know, is competition between copper and aluminum.

A. Yes.

Q. And no matter how few or how many you have in a particular region, it is the competition in that region rather than the competition in the Northeast, for example, rather than the competition in the Northwest or the Southwest, that would cover.

A. Except I would perhaps, if I may, take exception to the statement "competition." I don't believe there really

is competition.

Q. That is what you have been trying to prove here. [fol. 574] A. No—well, go ahead. Pardon me.

Q. All I am trying to do is point out for his Honor and for my own edification and for the record that in Region No. 1, which has a corrosion problem which you say to a relatively minor extent, with insulated and covered conductor, which is the only line of commerce in issue—

A. Yes.

Q.—between the Government and the defendants. That in 1959 there was still 22.1 percent of copper.

A. Yes.

Q. And in Region No. 2 there was still 29.4 percent.

A. That's right.

Q. And in Region No. 3 there was still 27.5.

A. That's right.

Q. And in Begion No. 4 there was 33.6. One third. And in Region No. 5 there was still 20.1.

A. Yes.

Q. And in Region No. 6, I shudder to state, there was only 7.4—7.6, which of course helps to bring up the weighted average.

A. Yes.

[fol. 575] Q. And in Region No. 7 there was 18.6 percent of copper?

A. Yes.

Q. Now, this covers gross new additions?

A. Yes.

Q. These companies are in areas that could use either copper or aluminum as they chose. These companies bought copper despite the price advantage that aluminum apparently had?

#### A. Yes.

The Court: The answer is yes.

Q. Now, let me ask you this, do you think that the companies that were furnishing insulated aluminum wire and cable conductors to those companies were trying to sell aluminum wire and cable, insulated wire and cable to those companies?

A. I am very sure they were.

Q. And in the balance, where aluminum was being sold, do you think that the copper companies were trying to sell copper to them?

A. Perhaps, although I believe copper companies-

The Court: Keep your voice up.

A. (Continuing)—were not trying too hard, as hard as [fol. 576] they used to, is my understanding.

Q. But they make it because they sell it in other areas?

A. They sell it, yes.

Q. And some instances like the Anaconda Wire and Cable Company, which is the same company that is trying to sell copper and aluminum; right?

A. Yes.

Q. Or the General Cable Company.

The Court: Just answer. You don't get anything on the record by shaking your head.

Q. Yes or no?

A. Yes. Yes. Pardon me.

Q. So that the manufacturers of insulated wire and cable are in there competing with each other to try to get the business of these utility companies for their covered and insulated wire products?

A. Well, I don't know that, Mr. Bergson. I don't know

the sales policies of the utility companies.

Q. Isn't it normal to expect that the aluminum companies are trying to take it away from the copper and the copper [fol. 577] companies are trying to take it away from the aluminum; and the ones that buy both are trying to self it?

A. That is the trouble. Many of them sell both and I don't know their policy in competing with themselves.

Q. Let's take Phelps-Dodge for example. Does Phelps-Dodge sell aluminum?

A. Not that I know of.

Q. They do sell insulated and covered conductors?

A. Yes.

Q. We heard several witnesses here yesterday and the day before say that they were making only copper?

A. Yes.

Q. They were in there competing with the aluminum companies?

A. Probably.

Q. So that when this, so that in these covered and insulated—well, let me ask you this question, in these covered and insulated conductor types of business we find using your weighted average of 77.2, which leaves 22.8 which is pretty close to 25 percent?

[fol. 578] A. Yes.

Q. The copper companies and the alyminum companies are in there pitching trying to get the business.

A. I would expect so, yes.

Q. Now, you say in your charts, and I don't quarrel with the accuracy in which the charts are portrayed, that aluminum has had quite a sharp increase since 1950.

A. Yes.

[fol. 579]. Q. Is the principal reason for that increase the difference in price between aluminum and copper?

A. Of course, that information wasn't supplied as a result of this questionnaire, and I can only give you an opinion based on my knowledge of the utility industry, and my answer is yes.

Q. And if it hadn't been for the price, differential, the

increase might not have been so startling.

A. I think that's right.

Q. Now do you know how the utility companies keep their records? I am sure in your years with the Federal Power Commission you have seen many a utility company record.

A. I was going to ask which records you are referring to.

Q. Their records of purchase of wire and cable products.

A. No, I haven't gotten into those. The accountant would normally investigate matters of that sort, but I know in general their method of recording additions to lines, which follow the purchases.

Q. Well, you have requested information from the utility companies in terms of feet.

A. Yes.

Q. Do you know whether they keep their records in terms of dollars as well?

A. No, most of them do not for conductor alone.

[fol. 580] Q. Don't they have to keep their records in

terms of dollars for rate-making purposes? :

A. Yes, but the dollars include more than just the conductor. You are asking me to go back in my memory quite a ways, Mr. Bergson, but I think I am reasonably sure there are appurtenances with the conductor that is in the cost accounting. The dollar total alone is not available.

Q. Do you think that if you had asked an additional question of the utility companies and said to them—in addition to giving me your purchases in feet, which I think was quite proper, I am not contending that it isn't, you could also have asked them the dollar value of such purchases; would they have been able to furnish that?

.A. I am sure they could have, but it might have taken

some work on their part to get it out of their records.

Q. This I am pretty sure took some work on their part, too.

A. It did, that's right.

Q. Now if you had requested the utilities to report in terms of dollars, and the utilities had reported in terms of dollars, and I might add parenthetically that dollars are rather important in this case because the Universe figures that we have been talking about in this case are in terms of [fol. 581] dollars, would the percentages have come out any differently?

A. I haven't thought about that, so I would hesitate to

give an off-the-cuff opinion. They probably would.

Q. Isn't it a matter of simple arithmetic if the aluminum is cheaper than copper, when you multiply the cheaper price of aluminum by the number of feet of aluminum and you multiply the more expensive price of copper by the number of feet of copper, that the copper dollar volume would show a corresponding increase?

A. Yes, you have a higher percentage of copper than has

been shown by feet.

Q. And wouldn't that have been fairly substantial?

A. Based on the testimony in difference in price of some of the previous witnesses, it would be fairly large.

Q. And the percentages might have come out nearer to 60-40 than 80-20.

A. I wouldn't cant to hazard a guess on that. I don't know.

Q. But in any event the percentage of copper in terms of dollars would be larger than the percentage of copper in terms of feet.

A. I think that's right.

- Q. Now taking your percentage ratio of 77.2 percent, and [fol. 582] here we are going to have to do a little bit of juggling because your figures are for 1959 and we have census figures for 1958, let me ask you this question first as a preliminary matter. In covered and insulated wire conductor, what products do you include, are included within your definition? Is it weatherproof and service drop?
- A. Yes.

  Q. Now I show you the census of manufacturers—I guess that hasn't been marked yet.

(The document referred to is marked Defendant's Exhibit AR-9 for identification.)

Q. Defendant's Exhibit AR-9 for identification is the 1958 census of manufacturers report for the non-ferrous metal, mill, and foundry products put out by the U. S. Department of Commerce and its constituent agency, the Bureau of the Census, and I now show you page 33-D-23 and ask you what the census total dollar weatherproof wire is for the year 1958.

A: Well, that is labeled weatherproof and slow-burning wire. Now I am not sure that includes only weatherproof wire that is used outside. I assume it is but I don't know that. I/want to point out, Mr. Bergson, that I have looked at some of these census figures and I am not sure what they [fol. 583] contain, but anyway the total you are asking for is 16,478—there are three figures there, I don't know whether it is—we have to total that up to get it . . . 37,988.

Q. That is 37,000,000, isn't it?

A. Yes, 37,988,000 for the three types of conductor under that category of weatherproof and slow-burning wire.

Q. Now under the category for service cable, what do the census figures show?

A. They have two figures there that would have to be

added . . . . 28.653.000.

Q. All right. Now would you mark both of those down on a piece of paper?

A. That should be 28,053,000 instead of 28,653,000.

Q. Would you add those two figures together?

A. 66,041,000.

Q. Now according to your report, 77.2 percent of that would be aluminum. Giving you the benefit of the rise in trend, giving your report the benefit of the rise in trend it would be 77.2.

A. Not necessarily. You are dealing in dollars. My report is dealing in feet.

Q. Well, let me put it this way, you are saying that 77.2 percent of all usage is aluminum, whatever the measure is. [fol. 584] A. No. No. On the basis of feet.

Q. Right.

A. I am not saying on the basis of dollars that it is 77 percent.

Q. Well, the basis of 77 percent, if you took 22.8 percent of that sixty odd million, that would show the amount in copper in its less favorable light, would it not?

A. It would be somewhat less probably than the amount

of dollars for copper.

Q. So let's accept this in the lesser favorable light to the Defendant and compute what 22.8 percent of that total is.

The Court: We will take a short recess.

(A short recess was taken after which the hearing was resumed.)

### [fol. 585] By Mr. Bergson:

Q. I think as we recessed I asked you to determine the percentage of copper according to your survey that would be represented by the total dollar volume for insulated and covered of the census; did you do that?

A. What I did, Mr. Bergson, I don't quite agree with your statement.

The Court: Keep your voice up.

A. I don't quite agree with the import of your statement, but what I did, I did multiply the 22.8 percent of copper dollars with the 66 million, I did it with my slide rule, and it is approximately, roughly it is 15 million.

Q. And you don't agree with me, because the dollar volume, if you are talking in terms of dollar volume, the dollar volume for copper would be greater than 15 million?

A. Well, it might be. There are so many variables in there that we have no knowledge of that I hesitate to express an opinion. We don't know for example whether the copper conductor, the 22.8 percent of copper conductor is bigger or smaller than the aluminum conductor. There are many things that we don't know that may influence it. It [fol. 586] is like trying to compare, and I am not saying this facetiously, but seriously, apples and peaches. We have no basis for firm comparison. If we want to make such comparison, I think we would have to go about it differently than you are doing it here, with all respect to you, sir.

Q. I think we would too, and I don't want to testify here, but I think we will find that the dollar value for copper was much higher than 15 million. But I don't want to

press you on it.

Just going back for a moment to the trend that you referred to, I noticed that in Region No. 4, I am looking at Table 1 which is on page 10 of your report, that in Region No. 4 covered and insulated conductor in aluminum in 1955 was 72.7 percent, and in 1959 it was 66.4 percent.

A. Yes.

Q. That is a sport, I gather.

A. There is an explanation for that. I was caught by that figure myself, and the reason for that is this. The City of Seattle, which was one of the utilities that we submitted a questionnaire to, did not have data for the years of 1950 and 1955. They had it only for 1959. And their distribution [fol. 587] system uses a great deal of copper. So that when their data for 1959 was put in without any corresponding data for 1950 and '55, it gave what appears to be a reversal in trend.

Q. Is there any explanation to that effect in your report?

A. No. But the schedules, of which you have a copy, clearly show that, sir. I might add, Mr. Bergson, that I tried to get that data from the City of Seattle by phone call to the city superintendent, Dr. Rayburn, who I know, and due to some acquisitions and other problems that they had with this situation they were not able to reply.

Q. Now in your questionnaire where you asked for opinions of the companies in Schedule 3, you asked the utility to state whether it expects any increase or decrease in

1960; is that right?

A. Yes. Or in subsequent years.

Q. Or in subsequent years, yes. Now, how many companies responded to that question by saying substantially or in effect that it depends on what the prices will be?

A. I didn't tabulate the data. I can't answer your ques-[fol. 588] tion in terms of numbers. There were some

utilities that made such a statement.

The Court: Keep your voice up.

Q. There were some who stated they did?

A. Yes.

Q. You don't know whether it would be as many as 15 or 20?

A, I didn't count them. I doubt if it was that many.

Q. Well, I am not going to take the time to go through each one with you. Now, how many companies reported that they expected no change in the relative use of aluminum and copper?

Mr. Melchior: Mr. Bergson, I think I have to object. The witness testified on direct examination that he did not tabulate the schedules 3 and 4 because they were not susceptible to tabulation. All these schedules are in the record and we can refer to them:

Mr. Bergson: I am not asking about the tabulation. I am asking him to state if he knows how many said they expected no change.

[fol. 589] The Witness: No, I don't know.

Mr. Bergson: We have tabulated them and we will introduce evidence to that effect on our case, but I just wanted to know if the witness did. I think that covers it. Thank you very much, Mr. Fosdick.

[fol. 590] Mr. Melchior: No further questions, Your Honor.

The Court: All right. That's all.

Mr. Melchior: Your Honor, we are going to introduce some documents in just one minute.

The Court: All right.

#### OFFERS IN EVIDENCE

Mr. Wertheimer: At this time, your Honor, the Government would like to introduce into evidence the following groups of documents, with omissions as indicated.

GX-228 to 231 for identification.

The next group-

The Court: Wait just a second. Let me pass on each group separately.

Mr. Wertheimer: All right.

Mr. Bergson: No objection to those, your Honor.

The Court: I will receive 228 to 231.

(Government's Exhibits 228 to 231 for Identification received in evidence.)

The Court: If you want to make a short statement as to what they pertain to, I would be glad to have it.

Mr. Wertheimer: In general, your Honor, this package [fol. 591] contains marketing studies by ALCOA concerning the products relevant to this case, predominantly aluminum conductor.

The Court: All right.

Mr. Wertheimer: The next group is 232 to 274, with the following omissions, 244, 247, 255 and 260.

Mr. Bergson: No objection, your Honor.

The Court: All right, I will receive them.

(Government's Exhibit 232 to 274, with the omissions as indicated, marked in Evidence.)

Mr. Wertheimer: This package contains documents relating to ALCOA's activities in aluminum conductor and conduit; Rome's activities in aluminum conductor and steel conduit and give the differences between aluminum and copper conductor, aluminum and steel conduit.

The next group if Government's Exhibits for identification 275 to 347.

Mr. Bergson: No objection.

The Court: All right. I will receive them.

(Government's Exhibits 275 to 347 for Identification received in evidence.)

[fol. 592] Mr. Wertheimer: The subject matter of these documents, your Honor, is conduit. Included in this package are documents setting forth differences between steel and aluminum conduit, documents consisting of intra corporate memoranda from Rome Cable Corporation in which the market share of Rome Cable Corporation in the eleven Western states is estimated, documents post-acquisition by ALCOA personnel describing arrangements whereby conduit, aluminum conduit would be produced or finished at Rome's Torrance Plant and distributed in the eleven Western states.

The Court: All right.

Mr. Wertheimer: The next group consists of Government's Exhibits 348 to 386 for identification, with the omission of 361.

Mr. Bergson: No objection. The Court: Received.

(Government's Exhibits 348 to 386 for Identification, with the omission of 361, received in evidence.)

Mr. Wertheimer: These documents, your Honor, generally relate to the line of commerce issue, the differences in physical and electrical characteristics of aluminum and [fol. 593] copper, aluminum and copper conductors, differences in price between primary aluminum and primary copper, and the conductor made from these two metals.

The next group is Government's Exhibits for Identifica-

tion 387 to 397.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibits 387 to 397 for Identification received in evidence.)

Mr. Wertheimer: These documents generally consist of memoranda from Reynolds Metal Company. They were

authenticated at pre-trial depositions in this case, Your Honor. The general subject matter is the aluminum wire and cable field and acquisitions therein and Reynolds' response thereto.

The final group to be offered at this time, Government's

Exhibits for Identification 398 through 408.

Mr. Bergson: No objection.
The Court: I will receive them.

(Government's Exhibits 398 through 408 for Identification received in evidence.)

[fol. 594] Mr. Wertheimer: These documents are from the files of Ebasco Company, a consulting firm hired by ALCOA to investigate the possibilities of acquisitions.

These are all the documents the Government intends to

offer at this time.

Mr. Melchior: The Government has nothing further to

offer today.

The Court: All right, gentlemen, it is agreeable to everybody that we recess this case until Tuesday morning. All right, you gentlemen can be excused, anybody connected with the ALCOA-Rome case can be excused.

(Whereupon, at 12:22 p. m., a recess was taken to Tuesday, February 13, 1962, at 10 o'clock a. m.)

## Transcript of hearing-February 13, 1962

[fol. 597] Mr. Melchior: Govenment calls Doniel Aymes.

DONIEL G. AYMES, called as a witness in behalf of the Government, being first duly 'sworn, testified as follows:

Direct examination.

## By Mr. Melchior:

Q. Would you state your name and place of employment?

A. Doniel G. Aymes. Place of employment, Aluminum Rigid Conduit Corporation, Westbury, Long Island.

Q. What position do you presently hold with that com-

pany?

A. Secretary-Treasurer.

Q. How long have you held this position?

A. Two and one-half years.

Q. What positions have you had earlier in the field of

aluminum or aluminum products!

A. Prior to this association I was with Capitol Products in Mechanicsburg for three years as executive sales manager. Prior to my association with Capitol I was with the R. D. Winter Company of Greenville, Pennsylvania, approximately five years. Prior to that I was with Kaiser Aluminum Products in sales capacity.

Q. From your experience are you generally familiar with [fol. 598] the manufacture and sale of aluminum conduit?

A. Yes.

Q. In what year was the Aluminum Rigid Conduit Corporation founded?

A. 1960.

Q. Would you state generally the line of products it man-

ufactures themselves?

A. It manufactures a line of aluminum rigid conduit from one-half inch to four inch I.P.S. and accessories such as couplings and elbows. A. Aluminum conduit is defined as ASA Schedule 40 pipe according to the American Steel Institute whereby this pipe is cut in 10-foot lengths, threaded at both ends, capped with a coupling at one end and a protection cap at the other, plus any identification or markings required by the Underwriters or federal agencies.

. 8 .

Q. What accessories do you sell?

A. Couplings and elbows.

Q. Would you explain to the Court what those products are?

A. A coupling is a piece of tubing or pipe which has been cut to approximately two and one-half inches and is slightly larger than its accompanying piece, the piece of rigid conduit which is threaded internally and champed on both ends.

Q. What is its function?

A. Its function is to join two pieces of conduit together.

[fol. 599] Q. What are elbows?

A. An elbow may be described as a piece of conduit which is bent to any included angle less than 180 degrees, varying from 30, 45, 90, 130 degrees, as the case may be, with both ends of the elbow being threaded for attachment to couplings.

Q. What is the function of elbows?

A. Elbows are to take the place of severe bends or joining portions in conduit whereby angles are required.

Q. Are these items essential to the use of aluminum conduit?

A. Yes.

Q. I believe you stated that you sell accessories. Do you manufacture them?

A. We do not manufacture them.

Q. Do you purchase them from others?

A. Yes, we do.

Q. Now, where is your plant located, Mr. Aymes?

A. Our plant is located in Westbury, Long Island.

Q. What in general is the machinery you have in this plant?

A. We have two pipe threading machines which have [fol. 600] the capacity of one half inch to four inch conduit.

Q. In what sizes is aluminum conduit generally sold on the market?

A. It is generally sold in the area of one half inch to four inches, with additional sizes of five, six and up, if the requirements are there.

Q. But your line is limited to half inch through four

inches, is that correct?

A. That's true.

Q. Now, I believe you described yourself as a fabricator of aluminum conduit. Is that correct?

A. Yes, sir.

Q. What is the raw material you use in fabricating conduit?

A. Aluminum pipe schedule ASA 40.

Q. What is aluminum pipe?

A. Aluminum pipe is extruded aluminum tubing, to pipe specifications.

Q. Who are your suppliers of aluminum pipe?

A. Allen Scott Aluminum Corporation

Q. Would you identify the Allen Scott Aluminum Corpo-

ration? Where are they located?

A. Allen Scott Aluminum Corporation is an extruder fab-[fol. 601] ricator of aluminum pipe, and is located also in Westbury, Long Island. It is the supplier of raw tubing to the ARCC Corporation.

Q. This raw tubing is aluminum pipe, is that correct?

A. Yes.

Q. Are you connected in any way with Allen Scott?

A. Yes.

Q. In what respect?

A. I hold the position of secretary-treasurer of that corporation.

Q. Are you generally familiar with the operations of that company also?

A. Yes, I am.

Q. Do you know from whom Allen Scott purchases the raw material it uses in manufacturing aluminum pipe?

A. Yes, I do.

Q. What is the raw material it purchases?

A. Extrusion billet.

Q. From whom does it purchase extrusion billet?

A. We purchase extrusion billet at various times from Alcoa, Kaiser, Reynolds, and Alcan.

[fol. 602] Q. From whom is Allen Scott Corporation presently purchasing billet?

A. The majority of our purchases of billet is purchased

from Alcan, Aluminium, Ltd.

Q. Do you presently purchase from Alcoa?

A. No, we do not.

Q. What is billet?

A. Billet is cylindrical in nature. It can come in sizes anywhere from three inches up through probably fifteen inches, depending on its required diameter. It also varies in length from twelve to thirty inches. It is alloyed to specification and is purchased for extruded alloy billet.

Q. This is the material that is extruded by Allen Scott

into aluminum pipe?

A. Yes.

Q. Now, Mr. Aymes, who are your principal competitors in aluminum conduit?

A. Alcoa, Kaiser, Reynolds, Revere, Harvey, Channel

Master, Jasco, and Hazelwood Engineering.

Q. Would you identify these companies by giving their

full name and location, if you know?

A. Alcoa is the Aluminum Company of America. I be[fol. 603] lieve it has several strategically located plants
in the United States for the manufacture of conduit.
Kaiser is Kaiser Aluminum and Chemical Corporation—
I believe sales corporation. They have several plants
strategically located in the United States. Likewise, Reynolds, I believe, is Reynolds Metals. Harvey is Harvey
Aluminum, located on the West Coast. Channel Master is
located in Ellenville, New York. Jasco is located in New
Hyde Park, New York.

[fol. 604] Q. Do you know the full name of Jasco?

· A. Jasco Aluminum Products.

Q. Do you know how many aluminum conduit fabrica-

tion plants Reynolds Aluminum has?

A. I believe there are least two. One in Phoenix and one in Richmond. Phoenix, Arizona and one in Richmond, Virginia.

Q. I believe you stated you had a single plant located in

Long Island; is that correct?

A. That is correct.

Q. Now, have you had experience in competitive disadvantage in competing with any of these companies by virtue of the fact that each of these companies have more than one plant?

Mr. Bergson: Well, I think that is a leading question in the first place, Your Honor, and I don't believe he has established that these companies have more than one plant.

The Court: I think I will take it. It is obvious and I suppose is a matter of position.

Mr. Melchior: We want the witness to state it for the record.

The Court: All right.

Q. Would you answer the question: Have you had ex-[fol. 605] perience in disadvantage—

A. Yes, we have.

Q. In what respect?

A. A stiff price competition.

Q. Would you explain what you mean by that?

A. Aluminum conduit is basically sold on a price schedule basis by zone. The definition of a zone is that area which encompasses a certain market area in which the products can be sold as well as distributed. Closeness to a certain market creates a higher competitive situation by virtue of the closeness or lack of cost of transportation, handling of the product from one point to another.

Q. How do you sell your aluminum conduit?

A. We sell it through recognized independent electrical wholesale distributors.

Q. And where are they located?

A. For the most part they are located in the northeast of the United States.

Q. Do you sell any to distributors in the western part of this country?

A. No, we do not.

Q. Why do you not sell them in that area?

A. The freight costs are prohibitive.

Q. Now, how far west do you actually ship your alumi-[fol. 606] num conduit?

A. Farthest west we can possibly go is east of the Mississippi.

Q. Now, do you ship on a deliver price basis or how do you sell the conduit?

A. We ship on an f.o.b. Westbury full freight allowed basis.

- Q. In other words, you pay the freight?
- · A. That is correct.
- Q. Now, you spoke about a zone pricing system. Can I understand from that that the nation is divided into a number of zones?
  - A. Yes.
    - Q. For pricing purposes? How many zones?
    - A. Six or seven.
- Q. Without giving us too much detail, can you tell us generally where these zones are located? What zone is your company in?
  - A. Zone 2.
  - Q. And where is—what generally is the zone 2 area?
- A. Zone 2 is generally what might be defined as the North Atlantic States.
  - Q. Now, where would Zone 1 be, if you recall?
- A. Frankly, it depends on who the competition is in Zone 1.

[fol. 607] Q. As far as your Zone 1 is concerned, I am asking you about.

- A. We have no Zone 1 as such.
- Q. You have no zone 1 as such. Do you have a zone 3?
- A. Yes, we do.
- Q. Where is that located?
- A. It begins where zone 2 leaves off and is the boundary between those states and zone 3, which then becomes zone 3.
- Q. I am not sure that I understand where zone 3 is. Could you identify certain states so we have the general locality?
- A. Assume in zone 2 we have the State of Ohio. The western, the next westerly state bounding the westerly border of Ohio would necessarily fit into zone 3 as the next zone.

The Court: Are these the zones that you sort of make up at your own convenience?

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The Witness: Your Honor, not for our own convenience,

but our own profit structure.

The Court: Well, yes. In other words, your zone 2 may not be the same as some other conduit manufacturer's zone 2!

The Witness: That is correct. It reflects our cost of [fol. 608] marketing the product in a certain area.

The Court: So you make up your zones yourself?

The Witness: That is correct.

The Court: All right.

# By Mr. Melchior:

Q. Where are your zones 6 and 7? .. 1

A. Our zones 6 and 7 are on the Hocky coast and the Far West. Rocky Mountain area and the West Coast.

- Q. Can we generally say that the zones as they go west, the number goes up? Your low zone numbers are in the eastern part and as the numbers of the zones go higher they go westerly; is that generally true?
  - A. That is correct.
- Q. Now, if you sell a stated quantity of aluminum conduit in Zone 2, would any customer in zone 2 purchase at the same price if the conditions were the same, from you?
  - A. Yes.
  - Q. Now, if you would-

The Court: Wait just a minute. I don't understand that. What is that, if you sell to zone 21.

Mr. Melchior: Would you repeat the question? [fol. 609] The Court: You repeat it, Mr. Melchior.

Mr. Melchior: Would you like me to rephrase the question?

The Court: Ya, rephrase the question.

# By Mr. Melchior:

Q. Directing your attention to zone 2, that is where your plant is located, and it covers several states, I believe, you described it as the northeastern section of the United States. If you sell a stated quantity in size of aluminum conduit to several customers within that zone, would all of those customers be charged the same price?

A. Yes.

Q. Within that zone? Now, if you would sell the same volume of aluminum conduit to several customers in zone 3, would the price to each of these customers in zone 3 be the same?

A. No, they would not. They would be higher.

[fel. 610] Q. In other words, your zone 3 customers would pay a higher price than your zone 2 customers?

A. That's correct.

Q. And why is this?

- A. It reflects the additional cost of handling and transportation.
  - Q. Into zone 3?

A. That's correct.

Q. Zone 3 being further from your plant, is that correct?

A. That's correct.

Q. Would all customers in zone 3 pay the same price to you?

A. Yes.

Q. Now, can we say the same with respect to all other zones?

A. Yes, we can.

Q. In other words, all customers in each zone purchasing conduit under similar conditions will pay the same price?

A. Yes.

Q. And in which of the zones are the prices the highest as far as the nation as a whole is concerned?

[fol. 611] A. Zone 6 and Zone 7.

Q. And they are in the Rocky Mountain area, West

Coast!

A. Correct.

Q. And they are furthest from your plant, is that correct?

A. That's correct.

Q. Would you generally state what processes are involved in fabricating aluminum conduit?

The Court: Is that limited—this man manufactures only rigid conduit, doesn't he?

Q. Do you manufacture any other form of aluminum conduit than rigid conduit?

A. No, we do not.

The Court: I notice in some of your questions you refer to rigid conduit. Then you would change your question to refer to conduit. Let's have it understood. You refer in your testimony, Mr. Witness, to rigid conduit alone?

The Witness: Yes. The Court: Okay.

- Q. You manufacture only rigid aluminum conduit? [fol. 612] A. That's correct.
- Q. You do not manufacture a product known as EMT aluminum conduit?

A. No, we do not.

\*Q. I believe I asked you if you would describe generally the processes used in fabricating rigid aluminum conduit.

A. Rigid conduit requires the threading of both ends of approximately 10-foot length of pipe, putting protective covering on one end, an aluminum coupling on the other end, then marking it, as the case may be. Then finally packaging it as the requirements are set up.

Q. Into what lengths is this conduit?

A. 10 feet.

Q. Is this the practice in the industry generally?

A. They are accepted as 10 footers with the specifications set up. They vary from nine feet eleven and a quarter inches up to ten feet, depending on the size of the conduit.

The Court: May I interrupt just a minute, for my own information.

Mr. Melchior: Yes.

[fol. 613] The Court: You described what you do, in this fabrication. You spoke of billet sometime ago. Do you make the pipe or buy the pipe? Do you fabricate the pipe in your operation, or do you buy the pipe already fabricated, made up, whatever the correct word is, and simply put the threads on?

The Witness: We simply put the threads on the pipe. The Court: What is this evidence you gave, something about billets, which I didn't quite understand anyway. Do you have anything to do with aluminum billet, whatever they may be, in your manufacturing process?

The Witness: We purchase this pipe from the company which extrudes this particular pipe from raw billets.

The Court: So when you use the word billet you meant

The Witness: No, sir, I meant in the sense of the raw commodity, prior to being made into pipe.

[fol. 614] The Court: Do you buy raw commodity and fabricate it into some form of a completed item of commerce?

Mr. Melchior: Your Honor, perhaps I could ask a few

questions that might clarify this.

The Court: You lost me, because we started out as being rigid conduit. Then we got talking about conduit. Then we got into billets.

Mr. Melchior: Well, because two companies became in-

volved. That's the reason, your Honor.

## By Mr. Melchior:

Q. You are secretary-treasurer of the Aluminium Rigid Conduit Corporation, is that correct?

A. Yes.

Q. And what does the Aluminum Rigid Conduit Corporation manufacture?

A. It fabricates aluminum rigid conduit and markets

that product.

Q. Aluminum rigid conduit, and markets that product. Now, what raw materials do you purchase to fabricate this conduit?

[fol. 615] A. Aluminum pipe.

Q. Aluminum pipe. And from whom do you purchase the aluminum pipe?

A. From Allen Scott Aluminum Corporation.

Q. Which I believe you stated is an affiliate of your company.

A. Define the word affiliate.

Q. I will withdraw the question. Are you connected in any way with this Allen Scott Company to which you refer?

A. Yes.

Q. You are familiar with their activities?

A. Yes.

Q. What does Allen Scott sell to Aluminum Rigid Conduit Corporation?

A. Extruded aluminum pipe.

Q. Extruded aluminum pipe. Now, what product does Allen Scott manufacture extruded aluminum pipe from?

A. Aluminum extrusion billet.

Q. From whom does Allen Scott purchase these billets?

A. From people such as Alcoa, Kaiser, Reynolds, Alcan, and so forth.

[fol. 616] Mr. Melchior: Is the relationship clear?
The Court: I guess so, but I still don't know what billet is.

Q. Would you describe for the Court what aluminum billet is?

A. Let me see if I can put it in layman's language. You take a tree, cut the limbs off, you've got nothing but a big log. To basically obtain billet, it is cast in long logs like the trunk of a tree, in various diameters. Then it is cut to specific sizes for the manufacturing requirements and limitations of the equipment available.

The Court: It is a solid piece of aluminum?

The Witness: Cylindrical in shape.

The Court: And from that solid piece of aluminum, cylindrical in shape, through a fabricating process you make a hollow pipe.

The Witness: Basically plastically deformed.

By Mr. Melchior:

Q. What do you mean by that?

[fol. 617] A. In the morning, when you get up, you squeeze the tube of toothpaste. Tubing is done the same way.

The Court: What I am getting at, it's a solid item from which your pipe is eventually made.

The Witness: That's correct.

Q. What type of company sells aluminum billet on the domestic market? Primary producer?

A. Primary producer, as well as several independent producers.

Q. Who are these independent producers that sell billet, if you know?

A. Channel Master, Capital Products, Aluminum Billets. Several others.

Q. What is hillet made from?

A. Billet is made from prime pig, or prime pig and scrap, or prime pig and alloy constituents.

Q. Who manufactures prime pig, domestically?

A. Alcoa, Kaiser, Reynolds, Anaconda, Olin, Revere, and a couple of others.

Q. In other words, primary aluminum producers; those who produce primary aluminum.

A. Yes.

[fol. 618] Q. Are you generally familiar with the physical and utilization characteristics of aluminum conduct?

A. Yes.

The Court: You are still talking about rigid?

Mr. Melchior: Rigid aluminum conduit.

The Court: Just to clear up something else. This witness described his sales difficulties in his zones. Which company were you talking about?

The Witness: Aluminum Rigid Conduit Corporation.

The Court: I see.

Mr. Melchior: The only reason we mentioned the other company was because it was the supplier of the raw material:

Q. Now, do you advertise any of the special characteristics possessed by rigid aluminum conduit?

A. Yes, we do.

Q. Do you publish any brochure or other advertising literature which points out what these special characteristics are?

A. Yes, we do.

[fol. 619] Mr. Melchior: May I have this marked?

(Product data sheet marked as Government's Exhibit No. 492 for Identification.)

# By Mr. Melchior:

Q. Mr. Aymes, I hand you Government Exhibit 492 for Identification and ask you to identify it.

A. This is a product data sheet which indicates the advantages of aluminum rigid conduit.

Q. And is this put out by your company as advertising literature?

A. Yes, it is.

Q. And what does it explain, generally?

A. The advantages, its final methods and its possible applications as well as installation of conduit.

Mr. Melchior: I offer Government's Exhibit 492 for Identification into evidence.

Mr. Bergson: No objection, Your Honor.

The Court: Now, tell me, what do I do with that? Certainly, I assume that anybody that manufactures anything or any type of conduit, I suppose, most of them think that their product is salable, that it is usable in the market. They may orally produce it or they may do it in writing. I don't think that this does any harm, but I am just wonder-[fol. 620] ing what possible use I make of it.

Mr. Melchior: It is my purpose at this time, Your Honor, to discuss, or have the witness discuss briefly the con-

tents and I hope that clarifies this for you.

The Court: Well, I will take it, but it just seems to me to be another one of these appendages that seem to attach itself to an anti-trust lawsuit.

Mr. Melchior: I would like to point out why I think it is important.

The Court: All right.

Mr. Melchior: As I indicated in my opening remarks, we think the proper test of the line of commerce under Section VII of the Clayton Act, i-s peculiar uses and characteristics. We feel the line of commerce is defined by this standard, and we cite in support of that the case of U. S. against Bethlehem Steel, the Supreme Court cases of Dupont and Crown Zellerbach. We feel that information of this type which sets out the peculiar characteristics and particular uses of aluminum conduit to be highly relevant [fol. 621] to a determination of this point of law.

The Court: Well, that applies to every single thing that

is manufactured, I suppose.

Mr. Melchior: Yes.

The Court: In other words, every single item has its own use, I suppose, has its own sponsors and so forth.

Mr. Melchior: We think that is true, and we think this is what the Court will do in evaluating aluminum conduit as a line of commerce because of its peculiar use in distinguishing aluminum rigid conduit from conduit made by other metals. We think it is highly significant.

(Government's Exhibit No. 492 for Identification received in evidence.)

# By Mr. Melchior:

Q. Directing your attention, Mr. Aymes, to Government's Exhibit 492, the pages don't seem to be numbered, about the third page indicates advantages. And there are a number of factors listed under "advantages." The first being resistance to corrosion. Would you explain to the Court as respects aluminum rigid conduit how aluminum rigid [fol. 622] conduit may differ from other forms of conduit in this respect? Do you need the Government exhibit to refresh your recollection? (Hands document to witness)

A. Corrosion is basically defined for those products that do not have ferrous alloy constituents. An iron product will rust. Non-ferrous product such as aluminum will-basically corrode. Corrosion in aluminum is a much, much slower acting reagent as compared to the rusting of a

ferrous or iron type of product.

This advantage, therefore, allows people to save on maintenance cost of maintaining this type of product.

Q. How would you save on maintenance costs? By using

aluminum rigid conduit?

A. They are almost nil compared to steel type of conduit.

Q. If you know, what maintenance costs are involved in using steel conduit that are not involved in using aluminum, rigid aluminum conduit?

A. Well, there is the painting of the product; the replacement of the product and the labor involved in either

one of these two operations.

Q. You don't paint aluminum conduit generally; is that [fol. 623] correct?

A. That is correct.

Q. How about steel conduit, if you know!

A. Well, there are many ways of attacking a problem of steel conduit with some sort of cleaning or other.

Q. And that is not necessary in aluminum conduit?

A. No, it is not.

Q. Another factor you have listed is good appearance. Could you enlarge on that a bit for the Court and explain why you consider aluminum conduit having good appearance is an advantage as compared to steel conduit?

A. Aluminum basically has become a household word. It gives an appearance as cleanliness, desirability, from the aesthetic sense. It has a good, cool-looking appearance. It is a shiny metal. People generally like it. It is considered to be light.

Q. Is this a sales factor?

A. Yes, it is.

Q. Do your customers purchase aluminum in some cases because of this factor?

A. They most certainly do.

Q. Another item you have listed is non-sparking. Can you distinguish aluminum conduit in that respect from steel conduit or any other type of conduit?

[fol. 624] A. I wish I had my engineers with me.

The Court: Well, you go ahead and give it. The Judge is supposed to use a little common sense, anyway. You help me a little bit.

The Witness: Right now I need your help.

The Court: I need yours.

Q. Do you understand the question, Mr. Aymes?

A. I do, but it is very difficult to give you an answer in just a few words.

The Court: What is the question?

Mr. Melchior: The question was: what the feature of nonsparking means, which is listed as one of the attributes of aluminum rigid conduit.

The Court: Presn't that mean that it is not a good con-

ductor as compared to steel?

The Witness: No, it means it is less hazardous to use aluminum conduit than steel conduit.

Q. In other words, in a toxic or gaseous atmosphere would this be a factor?

A. Well, sparking in the same area as combustible products could create some sort of problem.

Q. A problem that you wouldn't have in aluminum but [fol. 625] you may have in the case of steel?

A. Possibly.

Mr. Bergson: I am confused as to who the witness is and who the examiner is.

The Court: Yes. In that last, of course, it doesn't prove

anything. Might possibly have. If there is a difference, have him give it to us. I don't know what you are talking about now.

Q. Can you explain to the Court what the difference is

between aluminum steel conduit in this respect?

A. Since aluminum conduit is non-sparking it eliminates almost completely the danger by the use of application of aluminum conduit where products of combustion are available.

Q. Now, you have listed as another advantage of aluminum conduit lower installation costs. Would you explain that you mean by this factor?

The Court: It costs less to install, or you think it does; is that right?

The Widess: We know it does.

The Court: All right, next question.

The Witness: The reason for it is that a comparable piece [fol. 626] of steel conduit, say 4-inch, weighs 105 to 104 pounds as compared to the same size of aluminum which weighs roughly 34 to 35 pounds. The average individual can lift up a 34 pound piece. However, the average individual can lift up a piece of steel of the weight of 105 pounds to a required height. Therefore, it requires two people to lift the steel. By having the lighter weight, of aluminum, it would follow that you can install three times as much aluminum conduit as you would steel.

Q. Now, another factor that you have mentioned is the non-magnet property of aluminum. Will you explain what

you mean by this?

A. Well, under the old concept all magnets were basically made out of ferrous oxide products. In working under this old concept, aluminum is a non-ferrous product and therefore non-magnetic.

Q. Does this have certain advantages in the distribution of electricity?

A. Well, it reduces the voltage corp of other voltage carrying capacities.

The Court: Let me interrupt again.

When you are giving these advantages you intend to give the advantages of all aluminum conduit or just rigid

[fol. 627] aluminum? In other words, some of these properties you describe to me as advantages applies to all aluminum and not just to aluminum conduit?

The Witness: That is correct.

The Court: So when you are giving these advantages here, it is not limited to rigid aluminum conduit at all?

The Witness: Not in your sense of understanding of the question.

The Court: I don't know whether it has any sense or not. Go ahead.

Q. Will you look through the list of advantages you have listed there and indicate which ones are not applicable to the EMT form of aluminum conduit?

A. They are all applicable.

Q. In other words, the answer to the Court's question is that your comments with respect to pluminum are applicable to both rigid and EMT aluminum?

A. Yes:

Q. Have you formed any opinion as to the extent to which steel conduit may be displaced by aluminum conduit?

A. Yes, I have.

Q. Would you state it?

The Court: Well, the question is have you formed an [fol. 628] opinion as to the extent that aluminum conduit may replace steel conduit?

Mr. Melchior: Displace or replace, yes.

The Court: That is speculative. It may not replace it, at all.

Mr. Melchior: I think the witness has a certain amount

of expertise in the field from experience-

The Court: Whether he says it may, the end of the world may come tomorrow and we won't have any conduit. You are getting so far away from anything we can tie to it,—but I will-let him give the facts.

Q. Are you familiar generally with industrial and residential construction in the area wherein your plant is located?

A. Yes.

Q. Has conduit been installed in this, in buildings in this area for the conducting, for the conduct of electric current in these buildings?

A. Yes.

Q. Are you generally familiar with the type of conduit that is being installed in some of these newer buildings, particularly the larger buildings, the so-called skyscrapers in New York?

[fol. 628a] A. Yes.

Q. And are you cognizant of whether they are using

aluminum conduit or steel conduit or both?

A. Yes.

[fol. 629] Q. Now, has there been any noticeable change over the last three years, since you have been in business, as respects the volume of aluminum conduit being installed as compared to the volume of steel conduit being installed?

Mr. Bergson: I would like to inquire whether the witness will answer this from his personal knowledge, or hearsay.

Q. Answer this question from your personal knowledge.

A. From personal knowledge, yes.

Q. Yes, what? I'm not sure what that-

A. It is on the increase.

Q. What is?

A. Aluminum conduit.

Q. Aluminum conduit is on the increase. Now, in selling aluminum conduit, I believe you stated that you also sell certain accessories, which you described as elbows and couplings.

A. That's correct.

Q. Do you manufacture elbows and couplings?

A. No, we do not.

Q. How do you acquire them?

[fol. 630] A. We purchase them from outside sources, and many times from our competitors.

Q. Well, now, when you sell aluminum conduit do you sell these accessories in conjunction with the aluminum conduit?

A. Yes, we do.

Q. Do you sell any conductor wire and cable?

A. No, we do not.

Q. Do any of your competitors in the field of aluminum-conduit sell accessories along with their conduit?

A. Yes, they do.

Q. Do any of them sell conductor wire and cable.

A. Yes, they do.

- Q. Do any of them sell both aluminum and copper wire and cable?
  - A. Yes.
- Q. Now, do any of your competitors sell what I might describe as a full line of conduit—accessories, aluminum and copper conductor wire and cable?
  - A. Yes.
- Q. They do? Now, do you find your inability to offer [fol. 631] such a full line any disadvantage to you in attempting to make sales of conduit?

Mr. Bergson: Well, I object, your Honor. He didn't say he was unable. He said he didn't.

The Court: Yes, you are putting something in this question that there is no proof of.

- Q. I believe you stated you do not sell either copper or aluminum conductor wire and cable, is that correct?
  - A. That's correct.
  - Q. Have you ever considered selling it?
  - A. No, we have not.
  - Q. Would you state why you have not considered this?

Mr. Bergson: I object, your Honor.

The Court: Yes. Sustained.

Mr. Bergson: This is far afield.

The Court: Aren't these things obvious? Many of these things, certainly, a person with a complete line of products, be it aluminum, steel, clothing, textiles—I assume he has a broader space to sell and certain advantages.

[fol. 632] Mr. Melchior: We feel the same way, your Honor. I just thought I'd get it in the record if I could.

The Court: Well, you can't get it in the record this way. We don't need some of these things.

Q. Have any of your customers indicated a desire to purchase from you conduit and accessories as a package?

Mr. Bergson: I object, your Honor. I don't think that has any relevance.

Mr. Melchior: I think it is highly relevant.

The Court: How can you meet that? Sustained. Sure, I might go to him and say, "Listen, I want to build a big house and I'd like to have it all aluminum." Suppose I did

say it? So what? The next man comes in and says, "I don't want you to buy any part of it." I can't see—

### By Mr. Melchior;

Q. Have you ever found yourself in a position of not making a sale because your customer desired a broader line of products than you had?

[fol. 633] Mr. Bergson: I object,

The Court: Again, sustained. It is obvious. If a guy only sells candy, I suppose he might be out of a sale because he didn't sell popcorn. He doesn't make it, that's all. He can't sell it.

Q. Do you consign aluminum conduit to your customers?

A. No, we do not.

Q. Will you state why?

A. It takes a tremendous cash reserve.

The Court: It is not a good business practice in your judgment.

The Witness: It never was a good practice.

The Court: Well, a lot of people disagree, but your judgment is that it is not a good business practice. You don't have to go far to find that opinion either..

Q. Do any of your customers consign conduit to your knowledge?

A. Yes, they do.

Mr. Bergson: I'm sure you didn't mean to ask that question.

[fol. 634] Q. I'm sorry. Do any of your competitors consign conduit?

A. Yes, they do.

Q. Would you state which of your competitors engage in this practice?

Mr. Bergson: If you know.

Q. If you know.

A. The primary producers.

Q. The primary producers of what?

A. Of aluminum rigid conduit.

Q. Would you name them?

A. Kaiser, Reynolds and Alcoa.

Q. Do you publish price lists for this aluminum conduit?

A. We did.

Q. You did?

(Government's Exhibits 493 and 494 marked for identification.)

Mr. Bergson: May I see them, please?

Mr. Melchior: Yes.

Q. I show you Exhibits 493 and 494 for identification,

and ask you to identify them.

A. Exhibit 493 is our distributor price list, dated June [fol. 635] 1, 1960. Exhibit 494 is our distributor price list dated September 1st, 1960.

Q. In the trade do you describe Government Exhibit 493

in a particular way, for simplicity?

A. The sheet is most often described as the 1352 price schedule, which is the Zone 1 price for half inch conduit. Likewise, on 494 it is considered the 1285 price sheet schedule for half inch conduit.

Mr. Melchior: The Government offers Government Exhibit 493 and Government Exhibit 494 for identification at this time.

Mr. Bergson: I don't object. I question their relevance. The Court: So do I. It is a price list that went into effect on June 1st, 1960 and September 1st, 1960. Is it in effect now?

The Witness: No, sir.

Mr. Melchior: I was going to ask that question, your Honor.

The Court: Go ahead,

Q. Now, directing your attention to Government Exhibit [fol. 636] 493, which is your distributor price list effective June 1st, 1960, which, for brevity, you have described as the 1352 price list, would you state what that price list is?

A. It describes in detail the price to be paid for a specific

size or sizes of conduit in a specific zone area.

Q. In other words, for each size of pipe from half inch up to four inch, you have set forth a price and shown what that price is in each zone where that pipe would be sold, is that correct?

A. That's correct.

- Q. Now, directing your attention to Government Exhibit 494, which is your distributor price list for aluminum rigid conduit dated September 1st, 1960 and which you have described for brevity as the 1285 price list, I ask you whether the other prices set forth in there have been changed as respects the prices set forth on Government Exhibit 493?
  - A. Yes.

Q. In what way have they been changed?

A. There is a reduction in price.

Q. In other words, on September 1, 1960, your company reduced its prices on aluminum rigid conduit in all its sizes, in all its zones?

[fol. 637] A. That's correct.

Q. Why did you do this? A. To meet competition.

Q. Now, are you presently operating under your September 1, 1960 pricing schedule!

A. No, we are not.

Q. What pricing schedule are you operating under at present?

A. Frankly, we have none.

Q. Would you state why?

A. The last changes in price schedule which appeared were in April, 1961, and since then, for lack of putting out a price schedule, the competitive price situation is such that price schedules have been thrown out the window.

Q. You don't publish them anymore?.

A. No, because we are actually out of the conduit business.

The Court: You are out of the conduit business? The Witness: Just about.

Q. Now, would you state how you are just about out of

The Court: Can't make any money.

Ifol 638) A Well I was going to put it a little differently.

[fol. 638] A. Well, I was going to put it a little differently. For every dollar we sell, we have got to put twenty cents on top of it.

Q. I am not sure I understand that statement, Mr. Aymes.

A. The price has dropped so low that regardless of what a price we can buy it, we can't sell the finished product for

more than the raw material can be purchased. In other words, there are instances where the price of the finished product is below the price of the raw material.

Q. Have you finished your answer?

A. Yes.

Q. Did I understand you to say that the market price at which you are required to sell rigid aluminum conduit is below what?

A. The price for the raw pipe.

Q. The raw pipe that you purchase from Allen Scott?

A. That's correct.

Q. Is the price at which you purchase raw pipe from Allen Scott the generally prevailing market price for aluminum pipe?

A. No, it is below the market price.

[fol. 639] Q. Allen Scott sells below the market price to you, but you still cannot sell your rigid aluminum pipe at a profit, is that correct?

A. Allen Scott refuses to sell the pipe to us because it

is below their cost.

Q. Allen Scott cannot sell pipe to you?

The Court: Refuses to sell.

A. Refuses to sell.

Q. Why do they refuse?

A. They are losing money on every stick they make.

Q. Allen Scott is also losing money?

A. Correct.

Q. From your knowledge of the operations of Allen Scott,

why are they losing money?

A. Since 90 percent of the cost of aluminum pipe is in the raw material itself, the remaining 10 percent for labor and overhead indicate that unless they can purchase it at a lower raw material price, they cannot make money.

Q. Now, since you have been in the aluminum rigid conduit business, which as I recall began in 1960, what has

been the trend in aluminum conduit prices?

[fol. 640] A. Downward.

Q. The market price has been downward?

A. Yes,

The Court: That is the price to your consumer? Is that what you are asking?

ness ?

- Q. The price you sell to the consumer, or your customer?
- A. The distributor.

  Q. The distributer, which is your customer. Now, what has been, if any, the change in the price of aluminum pipe in the time you have been in business? Now, aluminum pipe is raw material that you use. Has there been any material change in the price since you have been in the busi-
- A. The appreciable change has been infinitesimal as compared with the drop in finished conduit.
- Q. From your knowledge of the operations of the Allen Scott Company which purchases billet and which sells aluminum pipe to your company, the Aluminum Rigid Conduit Company, what if any has been the change in the market price of billets since you have been in business in 1960?
- A. The price of billet has come down approximately be-[fol, 641] tween 8 and 11 percent, while the price of conduit has dropped 25 percent.

The Court: The greater part of the squeeze is on the price to the distributor or consumer.

The Witness: That's right.

- Q. This is the product you sell?
- A. That's correct.
- Q. Now, in order to give the Court an indication of what success you are having in selling aluminum conduit, I believe you began production and sales in 1960. Can you recall your approximate sales in the year 1960, the first year when you began production—your sales of rigid aluminum conduit?
- A. We started to market successfully in the last quarter of 1960. We sold in that three-month period about \$63,000 worth of conduit, which would be our annual rate of sales for the first year in business, projected sales volume roughly a quarter of a million dollars. In 1961, the books are just being closed out, we have done approximately \$93,000 total for the year. At the rate we are going, for 1962 we will be fortunate if we even sell \$50,000 in the en[fol. 642] tire year, and the reason for the sale of this \$50,000 is due to the fact that the remaining stock we have on hand, which we must liquidate.

- Q. Have you ever heard the expression "commodity pricing"?
  - A. Yes.
  - Q. Would you explain what it means?

Mr. Bergson: Is this for your company or— Mr. Melchior: What is the question, counsel?

Mr. Bergson: For his company or for-

Mr. Melchior: Commodity pricing? The term "commodity pricing" as used and understood in the industry.

Mr. Bergson: Well, I don't know that he is qualified to .

answer that.

The Court: I don't know either. Has he heard the words "commodity pricing"? Now you ask him to define it. I think you better—

Q. Are you familiar with the term "commodity pricing" as used and understood in the trade?

A. Yes.

[fol. 643] Q. Would you explain what this term means, as used and understood in the trade.

- A. Commodity price is that type of price which applies to specific goods for a specific industry. Its pricing structure is entirely different for this particular commodity in this segregated industry as compared to selling it on an overall basis.
- Q. Well, now, do any of your suppliers engage in commodity pricing to your knowledge? Strike that question. Do any of the suppliers of Allen Scott or Aluminum Rigid Conduit engage in commodity pricing to your knowledge?

A. Yes, they do.

Q. Would you identify them?

- A. I. would identify them overall as the primary producers.
  - Q. The primary aluminum producers?

A. That is correct.

Q. Do I understand your response to be that all the primary aluminum producers engage in this practice?

A. Yes.

- Q. As respects your two companies? [fol. 644] A. Yes.
- Q. Now, would you cite an example of how-is Alcoa one of your suppliers or Allen Scott's?

A. Not at present.

Q. They were at one time?

A. Yes.

Q. Were you ever involved in a situation wherein you discussed the question of commodity pricing with Alcoa personnel?

A. No, I was not.

Q. You were not. Were you ever involved in a situation where you discussed the question of commodity pricing with any other?

A. Yes, I was.

Q. (Continuing) Integrated aluminum company?

A. Yes.

Q. Would you describe the most recent situation?

Mr. Bergson: I object, your Honor. Discussions with Alcoa personnel I can't object to, but with any other aluminum supplier I must.

Mr. Melchior: I think one of the essential factors in this [fol. 645] proceeding, your Honor, is the question of industry conditions and a great part of the Government's case is not only to show the dominance of Alcoa in the aluminum and aluminum products field but also the dominance and concentration in the hands of primary producers. Therefore it is relevant.

Mr. Bergson: I don't object to it on the ground of relevancy. I object on the ground of hearsay. Granting for the sake of argument it is part of the Government's case, I think you got to prove it the right way.

The Court: Yes, I think that is going pretty far afield. You can go out and talk with all of these people and you get very different ideas. I don't know how that would help us here. I don't know how the defendant could meet it. No time and place here involved, no foundation. How in the world does anybody meet it.

Mr. Melchior: That is what I hope to get from the wit-[fol. 646] ness, if he personally was involved in the situation.

The Court: You asked him to tell us about the most recent. I don't know whether it happened the day before yesterday when he went out looking for it or if it happened in 1960. No foundation faid for it in my opinion.

Q. How recently have you been involved in conversations with any of the primary aluminum producers with respect to this subject of commodity pricing?

A. I would say it is a continuous thing.

Q. It is a continuous thing.

The Court: I am afraid you didn't understand the question. I think what you mean was, when did you personally have some talk or transactions with one of these primary producers which involved the subject of commodity pricing. Perhaps it happens every day, but he is asking you when and where and so on.

The Witness: Not being able to pinpoint the specific day of the week, I would say it has happened within the last [fol. 647] week and a half or two weeks.

## By Mr. Melchior:

Q. Can you recall a particular instance?

A. Well, as I said, every supplier comes in and you are continually after him on this commodity pricing. It is something we never cease to harp on because we are looking for that price advantage.

Q. Would you explain what this price advantage is that you are looking for as respects this recent instance that

you speak of!

Mr. Bergson: I think this is so utterly vague-

The Court: Yes, it is very vague. Apparently I think what this man means is that he can't proceed in this because he can't make a profit. When the suppliers come in to sell him, no matter where they come from, Kaiser Aluminum, Alcoa, anywhere, he constantly raises the question to them that he ought to be able to buy their goods cheaper. Isn't that in substance it?

The Witness: Yes, sir.

Q. Do you raise this question because you know of your [fol. 648] own knowledge that other customers of theirs are getting the commodity you want to purchase at a different price?

Mr. Bergson: I object, your Honor.

The Court: Yes, it is badly leading. Now, if he knows about something and can testify to it as a fact, I will let

him testify to it. What you are asking is for the mental operation of his mind, because he knows about something. Why don't you ask him is that the fact and let's get the facts out.

Q. Do you know as a fact that other companies and perhaps competitors of yours are purchasing material from any of the integrated aluminum companies at a price lower than you can purchase this same commodity from them?

Mr. Bergson: I object, your Honor. I don't think we should have "perhapses" in questions.

The Court: Well, perhaps it is not a very good one. I will overrule you and let him answer yes or no.

A. Yes.

[fol. 649] Q. You do know. Can you cite an instance of this?

Mr. Bergson: From your own knowledge.

The Court: Instance of what?

Q. From your own knowledge.

The Court: An instance of what?

Mr. Melchior: An instance of whether other parties are purchasing products from any of the primary aluminum producers at prices lower than he can purchase them.

Mr. Bergson: Now wait a minute. That is not what you

asked him. You asked about competitors.

Mr. Melchior: I said other parties including competitors.

Mr. Bergson: I object to it if it is other parties including competitors. I think if it is going to have any relevancy at all it must be confined to competitors.

The Court: Well, I don't know what we are getting at myself, but I am going to overrule and let him answer. Of course, I don't know what the question is. Better reframe it, Mr. Melchior.

[fol, 650] Mr. Melchior: I will reframe the question.

Q. Of your own knowledge do you know of instances where any of the primary producers have sold commodities to others at a price less than they were willing to sell them to you?

The Court: Hasn't it got to be, in asking him, hasn't

it got to be to others of the same things? Maybe Alcoa sold me some rigid aluminum for half what it cost. That isn't what we are trying here.

Mr. Melchior: No, the essence of the matter-I don't

want to testify.

Q. I will limit the question to your competitors initially.

A. The answer is obvious.

The Court: No. Just a minute, witness.

The Witness: It is obvious.

The Court: Just a minute. The answer isn't obvious.

He is asking you of a specific instance.

The Witness: Well, specific instances would be those specific times when we are high man on the totem pole and [fol. 651] not low.

The Court: Strike it out. Answer the question if you

can. Give us the time, place and names involved.

The Witness: My memory bank is not working good.

Q. You don't recall?

A. I can't come up with this answer.

Mr. Melchior: No further questions.

The Court: How in the world can you read it if you can't come up with it.

All right, cross-examination.

#### Cross-examination

### By Mr. Bergson:

Q. Mr. Aymes, what is the relationship between Aluminum Rigid Conduit Company and Allen Scott Aluminum Company?

A. The relationship is one of supplier and customer.

Q. What is the corporate relationship?

A. There is none. They are separate corporations.

Q. Do they have different stockholders?

[fol. 652] A. No, they do not.

Q. The same people who own the stock of Allen Scott own the stock of Aluminum Rigid?

A. That is correct.

Q. And the only difference is that you have two corporate set-ups?

A. Yes.

Q. Are you secretary-treasurer of Allen Scott and secretary-treasurer of Aluminum Rigid?

A. That is correct.

Q. Who is president of Aluminum Rigid?

A. Irving Schneider.

Q. And who is president of Allen Scott?

A. Irving Schneider.

Q. Do you have a board chairman?

A. No.

Q. Who is the executive vice president?

A. There is none.

Q. Are the offices of Allen Scott and the offices of Aluminum Rigid the same?

A. Yes, they are.

Q. Now, when you went into the—was Aluminum Rigid founded solely for the purpose of marketing aluminum conduit?

[fol. 653] A. That is correct.

Q. And when you entered the business of marketing aluminum conduit what sort of additional equipment did you need that Allen Scott didn't already have?

A. It did not have pipe threading facilities nor space

facilities.

Q. Nor space facilities?

A. That is correct.

Q. You mean you didn't have enough room?

A. Or operating personnel.

Q. How much do those pipe threaders cost?

A. I can't recall.

Q. \$5,000 f

A. Probably more.

Q. Tenf

A. Just about.

Q. About ten thousand. You stated that your sales area was primarily in the Northeast United States; is that right!

A. Correct.

Q. That is Zone 2. And you state that location gave the company an advantage?

A. Yes, it does.

[fol. 654] Q. From a freight standpoint. Do you know where Alcoa makes aluminum rigid conduit?

A. It would be impossible to know all the places they

can make it.

The Court: He asked whether you knew where they did make it.

Q. Do you know where they make it?

A. They appear to have one in Lafayette, Indiana and one on the West Coast.

Q. Now, when you sell in Zone 2 does Alcoa have a

freight advantage over you?

- A. I would have to examine the sheet to see whether Alcoa's Zone 2 is equal to my Zone 2 before I answer the question.
  - Q. I was asking do they have a freight advantage.

A. I don't know what their Zone 2 is.

Q. I am asking whether it is cheaper for Alcoa to sell in your Zone 2 than it is for you to sell in your Zone 2.

A. I can't tell.

- Q. Is Lafayette, Indiana further away from the area covered by your Zone 2 than Westbury, Long Island? [fol. 655] A. Not particularly.
  - Q. Not particularly?

The Court: Well, it is not at all; isn't that right?

Mr. Bergson: Sir!

The Court: It is not at all. You say "not particularly." I don't know what the word "particularly" means. It is not as far away.

Mr. Bergson: Westbury is not as far away.

The Court: No.

- Q. Now, isn't it a fact that the largest market for conduit in the United States is in Zone 2?
  - A. I believe so.
- Q. So that your plant is strategically located for meeting the largest marketing area for conduit in the United States?
  - A. That is correct.
- Q. You also—let me ask you this: If the price of steel conduit went down would that affect the price of aluminum conduit?

A. It has affected it in the past.

Q. It has?

o [fol. 656] A. Yes.

Q. And when you are selling aluminum conduit do you feel that you are selling in competition with steel conduit?

A. No, sir.

Q. You don't?

A. No, sir.

Q. Is there any function which aluminum conduit performs that cannot be performed by steel conduit?

A. None other than the advantages I have already given.

Q. Well, all right. You told us about some advantages such as sparking and painting and ease of handling. How about the disadvantages of aluminum conduit; are there any?

A. I can't think of any.

Q. Isn't aluminum a little softer than steel?

A. Yes.

Q. Doesn't it bend more readily than steel? Doesn't it damage more readily than steel?

A. Not particularly.

Q. Isn't it easier to pull wire through steel than it is through aluminum?

[fol. 657] A. It is only easier if you don't have the knowhow. But once you acquire the know-how, both are easier.

Q. Isn't it a fact, when you put out your brochure you are putting out a tout and that you are extolling the advantages of aluminum conduit and the disadvantages of steel conduit?

A. I don't know what your definition of "tout sheet" is.

Q. A promotion sheet.

A. All our sales are promotion.

Q. There is a little puffing in it and a little exaggeration?

A. No exaggeration.

Q. You emphasize the virtues and you cover up the disadvantages. Isn't that normal?

A. No.

Q. When you perform the function of manufacturing aluminum rigid conduit from pipe, is there any particular art to doing that?

A. We think there is.

Q. Isn't it just putting threads on the end of a hunk of pipe!

A. To the average layman, yes.

[fol. 658] Q. And putting a little coating on the inside so that the wires will slip through a little bit more readily?

A. They look like little things, but they are not.

The Court: But that is what you do is his question. Is that what you do?

The Witness: Yes.

- Q. And that is the function that you perform, that the Aluminum Rigid Conduit Corporation performs?
  - A. That is correct.
- Q. It puts some threads on the end of a pipe, puts some lubricant inside the pipe and sells it as aluminum rigid conduit?
  - A. That is correct.
- Q. And you got into the business with machinery of about ten thousand dollars?
  - A. Yes.
- Q. And you feel that you are at a tremendous disadvantage because you have to compete with companies who have investments of substantially greater amounts?
  - A. I don't think they have any greater equipment.
  - Q. Greater investment?
- [fol. 659] A. No, I do not.
  - Q. You don't think Alcoa in making its aluminum rigid conduit performs more than the function of putting some threads around the end of a pipe and putting some lubricant inside the pipe. Doesn't Alcoa take the pipe, coming from the beginning to the end, doesn't it take the bauxite, smelt it, make the alumina, make the aluminum, make the pig, make the billet, extrude it, make the pipe, put the threads on the pipe? Don't you think that that is a little bit more than the function that you perform?
    - A. Yes.
  - Q. And don't you think that Alcoa had to have an investment to do that?

The Court: The answer is yes, isn't it? Just so we get it on the record.

A. Yes.

Q. How could you have gotten into the business for ten thousand dollars unless other people performed all these functions for you before you got to that stage of the game?

A. Can you repeat that question?

Mr. Bergson: Would you repeat the question.

[fol. 660] (The reporter repeated the question as above recorded.)

The Witness: The only way I could answer you is to say that this is a democracy and this is how small businesses persist.

The Court: But you have to have those things done. Let's not waste time on it. You have to have those things

done by someone else.

The Witness: Correct.

The Court: Before it reaches the stage when you get it. The Witness: Yes.

The Court: The answer is yes. Take a short recess.

(At this point a short recess was taken after which the trial was resumed.)

## Cross-examination. (Continued)

# By Mr. Bergson:

Q. In your direct examination you testified Allen Scott in its production used certain amounts of secondary aluminum.

A. No, I did not.

[fol. 661] Q. You did not?

A. No.

Q. They use no secondary metal at all?

A. Oh. Will you rephrase your question again.

Q. That Allen Scott used secondary metal in some of its products.

A. Yes, they do.

Q. Would you tell the Court what secondary aluminum is?

A. Secondary metal is defined as that material which is

alloyed a second time with the addition of primary metal and alloyed metal from the first time around.

Q. It is made from scrap, with an addition of some pri-

mary metal, is that right?

A. Yes.

Q. Scrap aluminum. Now, who are the suppliers of scrap aluminum, do you know? Who are the suppliers of scrap aluminum? Who sells it.

A. I testified to who they were before. I said Channel

Master, Capitol, Aluminum Billets:

Q. You said the suppliers to Allen Scott.

[fol. 662] A. No, you didn't ask me who the suppliers were to Allen Scott. You asked me who they are. So can you define it a little more fully for me?

Q. Well, all right. Do you know who sells secondary metal, irrespective of whether they sell to Allen Scott or

not?

A. Yes, I do. .

Q. Who are they?

A. Channel Master; Aluminum Billets; Capitol Products. Is that enough?

Q. Well, there are several others?

A. There are many more.

Q. Does Allen Scott make any secondary metal itself?

A. No, it does not.

Q. Now, you also testified that so far as Allen Scott's principal purchases or purchases of primary metal are concerned, at the present time it is purchasing most of its metal from Canada, is that right?

A. That's correct.

Q. Just one final question. Does Aluminum Rigid Conduit Company report its sales of aluminum conduit to the Census Manufacturers!

A. Yes, it does.

[fol. 663] Mr. Bergson: Thank you.

### Redirect examination

#### By Mr. Melchior:

Q. On cross-examination you were asked for an approximation of your expenditures for the threading machines.

A. Yes.

Q. Now, what machinery does Allen Scott have or utilize in manufacturing aluminum pipe from billet?

A. Well, it has a self-contained aluminum extrusion press

and the allied equipment to extrude.

Q. This equipment is necessary to extrude aluminum pipe from billets, is that correct?

A. Yes.

Q. Can you indicate generally the approximate value or cost of this machinery?

A. In excess of \$400,000.

[fol. 664] Q. Now, if I understand your testimony in respect to secondary aluminum, did you say Allen Scott purchases secondary aluminum?

A. He does. It can be answered both yes and no.

Q! Would you explain your answer!

A. In the process of manufacturing a product there is always scrap generated.

Q. Manufacturing what product, Mr. Aymes?

A. Aluminum product. Like aluminum conduit and aluminum pipe there is scrap generated. It is common practice to convert the scrap back to the alloying requirements, and this is done either by outright sale or toll conversion. So the majority of our scrap that is generated is given out for toll conversion.

Q. What does that mean, given out?

A. Toll conversion is taking the generated aluminum scrap, the fall-offs, the cuttings, the rejects, and having it reconverted or toll converted back into the alloy required.

A. In other words, the scrap from your operation is converted by the toll converter and the result of the product is resold to you?

A. That is correct.

Q. In other words, it is the metal that you get back [fol. 665] is your own metal, is the same metal that you had originally, which has been remelted?

A. That would be very difficult to refine. We get it back in poundage but we don't know whether it is our own metal

or not.

Q. But it is the same type of metal?

A. Yes.

Q. Is this the secondary metal that Alan Scott uses in extruding pipe?

A. That is correct.

Q. Does it use it for any other purpose?

A. It uses it for other purposes.

Q. Oh, it does. What other purposes?

A. For other extruded shapes that Allen Scott produces for its customers.

Q. Can you give me an indication as to what percentage of the so-called secondary that you have reconverted is used for conduit and what percentage—strike conduit—is used for aluminum pipe and what percentage is used for other products of Allen Scott?

A. Not being able to segregate the aluminum in the plant that well, I would say less than 5 per cent of our secondary

is used in pipe.

Q. In aluminum pipe for conduit purposes? [fol. 666] A. That is correct.

Mr. Melchior: No further questions.

#### Recross-examination

# By Mr. Bergson:

Q. Mr. Aymes, what products does Allen Scott produce?

A. Aluminum extrusions.

- Q. What form?
- A. Whatever form the customer requires.
- Q. Is that the major part of its business?

A. Yes, it is.

Q. And in that major part of its business does it use the same 400 thousand dollars worth of machinery that you were talking about in answer to Mr. Melchior's question? A. Yes.

Mr. Bergson: No further questions.

The Court: Just one question. Witness, I am not certain I understand about these two companies. One of them is the Aluminum Rigid Conduit Company; is that right?

The Witness: That is correct.

The Court: And the other is the Allen Scott Company? The Witness: That is correct.

[fol. 667] The Court: Do they, where are their places of business with reference to each other?

The Witness: They are in the same proximity.

The Court: Do they occupy entirely separate facilities

or are they interchangeable?

The Witness: They operate separate facilities and at times some of the facilities are interchangeable like the recording book or the telephone switchboard.

The Court: How about any manufacturing facilities;

are they interchangeable at all?

The Witness: No, sir.

[fol. 668] Q. So that all orders or all merchandise manufactured by Allen Scott are made in their own facility?

A. That's correct.

Q. And all pipe, I guess, is the only thing the other company manufactures, is made in its own facility?

A: That's correct.

Q. You mentioned you had to have extra space. Do you have separate buildings? How does that work?

A. Prior to 1960, or let's say November of 1959, we oc-

cupied five separate buildings.

Q. When you say we, who are you talking about?

A. Well, these various companies.

Q. I thought you didn't go into business until 1960.

A. The reason we did not go into business until 1960 is that Allen Scott occupied two buildings in separate locations, and in building a new plant, the conduit program was held up until the supplying company could function. properly. The equipment was moved from December, 1959. Finally put back into working condition by April, May, June of 1960. Then that put us in the middle of the second [fol. 669] quarter by the time we started producing again and having a stock for the conduit company, that did not occur until the fourth quarter of 1960.

Q. Well, that's what confused me a little. You started to tell me something about 1959. This rigid conduit company did not start to produce until about the last quarter

of 1960, as I understand it.

A. That's correct.

Q. All right. So that what happened before that? The companies were intermingled, or were they separate?

A. One was functioning, and the other was a projected company.

- Q. I see. All right. Now, if I understand it right, in 1960, when the Rigid Conduit Company began to produce, they occupied some additional space in other words?
  - A. That's correct.
- Q. They spread out into space that you might call their own.
- A. Space was assigned and allotted for them, separate and distinct from the other operation. With its own equipment.
- Q. Well, do you mean that the Aluminum Rigid [fol. 670] Conduit Company occupied space owned and controlled by the other company? Is that what you mean? When you said "alloted"—

A. Your question is one which leads me and brings in several additional companies. In other words, there are other companies that these companies rent space from.

- Q. Well, that doesn't help either. These companies rent space from. Who is your landlord, if I may use the term? The Aluminum Rigid Conduit Company. Whom do you rent from?
- A. I am trying to figure out which one. It does not rent space from Allen Scott. It rents space from Venimore.
  - Q. What is Venimore?
  - A. Venimore is a real estate corporation.
  - Q. Do they own the buildings?
  - A. Yes, sir.
- Q. I see. And are they also connected by stock ownership or common directorship, officers, by either the Aluminum Rigid Conduit Corporation or the Allen Scott Company?
  - A. No, sir.
  - Q. They are entirely separate?
- [fol. 671] A. Yes, sir.
- Q. Now, are the other companies or concerns which occupy adjacent space controlled by either the same corporate ownership of either the Rigid Conduit or the Allen Scott?
  - A. I think so. I'm not sure.
- Q. Well, you see, witness, in order to get anything out of your testimony I have to know something about it, because of course the success or failure of any company depends upon a lot of things. It depends upon competi-

tion. It depends upon overhead. It depends upon a lot of things. Now, are there any other companies engaged in any type of manufacture who are occupying any part of the same facilities as the Rigid Conduit Company and the Allen Scott Company?

A. By definition, what do you mean, "same facilities"? Q. Well, I don't mean to be too tough on semantics at all. Are there companies in there that occupy part of the same building, for instance? I am going to let you tell us. What kind of an arrangement have you got down there?

[fol. 672] The Witness: I think it will solve your— The Court: All right, tell us what it is.

The Witness: We have four companies, four distinct manufacturing companies. The oldest one is SeasonMaster, which is a manufacturer of aluminum building products. The second oldest company is Allen Scott Aluminum Corporation, which manufactures aluminum extrusions. Approximately 60 per cent for Season Master and 40 per cent for the outside. For SeasonMaster competitors. The third oldest company is Aluminum Rigid Conduit and it buys tubing primarily from Allen Scott for the manufacture of cenduit. Now, these first three companies that I have mentioned, there are walls or partitions in this building that we put up. What I started to tell you is that we basically had five buildings. In an attempt to reduce the overhead, to reduce all the additions that go in a unhealthy manufacturing company, we decided to put them as close in one area or combination of areas-To put them as close under one roof or combination of roofs in one area. This building is approximately 105 to 130 thousand square feet. It was put up in sections because all five buildings of five manufacturing facilities could not be [fol. 673] moved at one particular time. So they were moved over on a turntable basis.

The first company that was moved over was the aluminum extrusion company, Allen Scott, so that it could function properly. Then the second company that moved over was the aluminum fabrication company, SeasonMaster.

Now, SeasonMaster occupies a separate facility of manufacturing, separate by building, separate by docking space, separate by service. And this separation is basically what

is termed under the building code of a Class A fire wall, but there are methods that you can go from one building to another with a minimum of effort.

The space that Aluminum Rigid Conduit occupies might be defined as adjacent but not part of the Allen Scott facilities. Each one of these corporations pays rent to either another corporation or to a building corporation. I have to check to see how it was set up. In other words, the builder when he built these things set up many corporations as well, so I could not give you a definite answer.

Now, the fourth company we have is the anodizing com-

pany, that is called IDM Anodizing.

[fol. 674] The Court: What is that?

The Witness: It places an anodized coating on aluminum which retards the rate of corrosion.

The Court: Well,-

The Witness: Now, this is a processing company. Now, any one of those four companies are basically independent of the other. They buy from one another. The transaction is no different than the relationship between an outside customer and any one of its suppliers.

The Court: All right. Now, does this Season Good-

The Witness: SeasonMaster.

The Court: That is one I just heard of now, and the other is Ano—

The Witness: IDM, like IBM. I wish—IDM Anodizer. The Court: Now both of them have to do with aluminum, too?

The Witness: Yes.

The Court: What is the stock ownership of the Season-Master Company?

Master Company?

The Witness: The same as Aluminum Rigid Conduit.

The same as Allen Scott.

The Court: What is the stock ownership of [fol. 675] IDM Company?

The Witness: Same ownership.

The Court: What about the officers?

The Witness: Same officers. Same positions.

The Court: Well, with that kind of setup, Mr. Witness-how about the Board of Directors?

The Witness: Same Board of Directors.

The Court: With that type of setup you can easily control the profit or loss of any one of the companies, can't you?

The Witness: No, sir. The Court: You can't? The Witness: No, sir.

The Court: Well, how much of the President's salary is paid by the Allen Scott?

The Witness: None.

The Court: How much by Rigid Aluminum?

The Witness: One-tenth.

The Court: How much by SeasonMaster?

The Witness: 90 per cent.

The Court: And how much by IDM!

The Witness: Nothing.

[fol. 676] The Court: So that, for instance, with that example, the salary of this one officer is handled 90 per cent by one of these four companies and 10 per cent by another?

The Witness: Yes, because his duties and functions are

in that particular company mostly.

The Court: I understand that. I don't question you. When you answered me, when companies like that are commonly owned, that they are not capable of affecting the profit and loss of each other, I am a little surprised because I always thought they could pretty easy. Now, as an example, they pay 90 per cent of the president's pay in this one corporation; is that right?

The Witness: Yes.

The Court! And 10 per cent in the other. And no percentage, no overhead, for a president in this IDM and Allen Scott?

The Witness: That is correct.

The Court: So that the overhead in those two companies are somewhat lower, that is, they don't have the item of a president's salary?

The Witness: But he still has an element of risk for his investment.

[fol. 677] The Court: I am not worrying about his risk,

I am just trying to figure out the officers, because, after all, this involves, and I repeat the proposition, I am a little surprised when you say it couldn't affect the profit and loss where there is common stock ownership. I am just trying to figure out how that happens. Now, I assume that the Board of Directors have the power of voting salaries; haven't they?

The Witness: Yes.

The Court: They have the power of allocating salaries. The Witness: Yes, sir.

[fol. 678] Q. All right, From what companies do you draw salary?

A. I personally?

Q. Yes.

A. Allen Scott Aluminum and the anodizing company, IDM Anodizing.

Q. So you don't draw any salary fom Rigid Conduit Company at all?

A. No, sir.

Q. But the president does?

A. Yes, sir.

Q. How about the dividends that have been declared in the last two years on these companies?

A. There have been no dividends declared.

Q. By any company?

A. No, sir.

Q. All right. Is the stock owned other than by the officers and directors?

A. No, sir.

Q. So it is all—all the stock is in the hands of the officers or directors?

A. That's correct.

Q. So that the profit, assuming there was one, in any of these companies can be taken up by salaries [fol. 679] rather than dividends?

A. Not necessarily.

Q. No, not necessarily, but it can be done by a simple vote of those that own it?

A. Oh, but not in this particular case, or any of these cases. Salaries have not changed in the last three years.

- Q. I didn't ask you that. That's what they can do. All of this is controlled by these three or four men, isn't it?

  A. Yes.
- Q. That's all I am getting at. They have the usual powers of the board of directors, and the usual powers of company ownership?

A. That's correct.

Q. That's all I am trying to ask you. Very simple. All right. Just one or two more questions. Seasonmaster does what?

A. Fabricates aluminum extrusions into building products. Building products are storm windows, storm doors, porch enclosures, bathtub enclosures—those things that go into home improvement within the building industry.

Q. Now, what does this other company, this [fol. 680] IDM?

A. The IDM Anodizing Company is a job shop contractor which anodizes aluminum extrusions. 60 percent for outside use, 40 percent for inside use, on any one of these which you call inside control companies.

Q. I suppose these companies do work for each other in the course of their business?

A. Yes, sir, but may I add one point. There are times during the year or our season whereby one of the producing companies cannot take care of another company's requirements. We therefore buy our additional requirements on the outside.

Q. I assume that's true; all depends upon whether you are busy or not. But they do work for each other?

A. They do.

Q. Who fixes the price of that work?

A. The competitive market price on the outside.

Q. Oh, no. Who fixes it? The board of directors?

A. Purchasing agent.

Q. So that he could control whether a company made or [fol. 681] lost money by the price that he charged for this interchanging work?

A. Yes.

Q. All right. That's all.

Mr. Melchior: May it please the Court, I am not sure

that the record reflects whether your Honor admitted Government Exhibits 493 and 494.

The Court: I think it does; if it doesn't, I will now admit them. I think I admitted them.

Mr. Melchior: Thank you.

PAUL A. Nehring, called as a witness on behalf of the Government, being first duly sworn, tentified as follows:

Direct examination.

### By. Mr. Mahaffie:

Q. Will you state your full name, please, sir, and your occupation?

A. Paul A. Nehring, president, Nehring Electrical Works. Manufacturers.

Q. Where is the Nehring Electrical Works located, sir!

A. DeKalb, Illinois.

[fol. 682] Q. Mr. Nehring, would you describe the product line of the Nehring Electrical Works?

A. Well, we manufacture electrical conductor, copper and aluminum wire and cable. Copper and steel insulated wire. And some fine wire that's very fine and insulated.

Q. By "fine wire" you mean, sir, insulated fine wire?

A. Yes, fine wire drawn and stranded.

Q. These are for use as electrical conductors?

A. Oh, yes, everything we make is for electrical conductors.

Q. Mr. Nehring, you stated you manufacture both aluminum and copper electrical conductor products?

A. Yes.

Q. In what form do you buy aluminum, sir?

A. In rods. Aluminum rods, for drawing into wire.

Q. Mr. Nehring, have you since approximately 1956 written any letters to any of your suppliers of aluminum rod concerning the relationship between the price of aluminum rod and the price of finished aluminum wire and cable products?

[fol. 683] A. Yes, to all of them; to the copper people

also, and told them verbally, trying to get the price down, which I have done on copper. It is perfectly natural to try to buy cheaper. My stock in trade.

Q. I hand you a document which has been marked Government Exhibit 424 for identification, sir, and I ask you

if that is one of the letters of which you speak?

A. Yes, it is, and I might say I am ashamed of it. This letter was written—I'll tell you the reason for all those letters. And not that I expect a company like Aluminum Company to lower a price when there is a little price war on, on cable—a little company like mine—going to lower the price—it's almost laughable. The main reason of writing that, knowing C. B. Owen, Holloman, fine fellows, all fine fellows, you like to give them an order. It was written mainly for that purpose. Not expecting a lower price.

Q. Who is the letter addressed to?

A. C. B. Owen, now retired. Aluminum Company of America.

QD What is the date of the letter?

[fol?684] A. July 1st, 1957. Now, these aluminum rod salesmen don't sell cable, and they are all after me, calling on me to sell rods, which I like to give them orders when I can. The letters were written to let them know why I am not buying more rods, thinking I'm buying them elsewhere. Really, I am ashamed of those. They are not business letters at all.

The Court; You needn't be ashamed of them.

A. (Continuing) Trying to get a lower price.

Q. Mr. Nehring, is there any statement confained in this letter dated day 1st, 1957, which was not true at the time you wrote the letter?

A. No, it is all true.

### OFFERS IN EVIDENCE

Mr. Mahaffie: I offer Government Exhibit 424 at this time.

Mr. Rergson: No objection.

The Court: Received. :

(Government Exhibit 424 marked received.)

The Witness: What is in that principally?

Mr. Mahaffie: I'm sorry, I thought you had read it over. [fol. 685] The Witness: You know, when I talk about aluminum cable selling cheaper, there might be—I wouldn't know exactly how much, and all that, unless—

Mr. Mahaffie: Well, why don't you take the time to look it over, and if there is anything which is misstated as of the time it was written we will correct the record on its

The Witness: Yes. You see, when price changes take place on copper or aluminum, then the finished rod and the finished wire and the insulated wire and strand lowers also. But when there is a price war on, the raw materials don't decline because it is only a matter of a short time.

# By Mr. Mahaffie

- Q. Well, am I correct, sir, that the statements in this letter were true at that time?
- A. Yes. Places where I say a difference of so many cents a pound might not be just exactly—

Q. Might not be precisely accurate?

A. They were written mainly to let the salesmen [fol. 686] know why, we weren't buying more rods. Not let them think we were buying them elsewhere.

Mr. Mahaffle: I offer at this time documents which have been marked as Government's Exhibits 425, 426 and 427 for identification. These, if I may, your Honor, are Alcoa documents which relate to the letter which was previously introduced. One of them is the answer to that letter.

Mr. Bergson: May I see those just a second?

Mr. Mahaffie: Yes.

[fol. 687] Mr. Bergson: No objection, Your Honor.

The Court Received.

(Government's Exhibit 425, 426, and 427 for Identification received in evidence.)

## By Mr. Mahaffie:

Q. Now, Mr. Nehring, I hand you a document which has been marked as Government Exhibit 428 for identification and I ask you, sir, if this also was one of the letters which we talked about previously?

A. Yes, it is.

Q. To whom was that letter written?

A. To C. B. Owen, Aluminum Company of America.

Q. What is the date of it, Mr. Nehring?

A. July 16, 1957.

Q. Mr. Nehring, with respect to that letter dated July 16, 1957, are there any statements contained therein which

were not true at the time they were written?

A. No, unless it is a difference in price because of some equating, you know, some would be a difference in price. Below what we used to call the market. Because when the market changes, then all materials change generally first, so it is just a case of lower prices to get business in raw materials, because it don't last long. I always understood the Aluminum Company does not cut prices, but it [fol. 688] might meet a price when it is going out, but it don't last long and they are back in the harness again.

Mr. Mahaffie: I. offer Government Exhibit 428.

Mr. Bergson: I don't object to the admission of the document as a whole. The document does contain hearsay statements to which I do object.

Mr. Mahaffie: May I ask whether your objection is to

the fourth paragraph of this document?

Mr. Bergson: No, I don't care about that one.

Mr. Mahaffie: Which one do you-

The Court: What does it say? . .

Mr. Bergson: It says: "Mighty strange there was such competition in ACSR and not in rods or pig aluminum. It certainly appears that the price of rods and pig is agreed upon by the large producers."

I don't think that this letter is competent to prove any-

thing in that gegard.

The Court: Of course, we are not trying that.

[fol. 689] Mr. Mahaffie: No, sir. I don't think it has much probative value, but I don't think it is bearsay.

The Court: Well, I think it certainly is.

Mr. Mahaffie: It is perhaps opinion.

The Court: Well, what is opinion?

Mr. Mahaffie: Well. I am perfectly willing to offer this document without that statement.

The Court: All right. I will receive it without the statement.

(Government's Exhibit 428 for Identification received in evidence.)

Mr. Mahaffie: I offer at this time a document which has been marked as Government's Exhibit 429 for identification. This, your Honor, again is an internal ALCOA document relating to Exhibit 428 which has just been offered.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit No. 429 for Identification received in evidence.)

## By Mr. Mahaffie:

Q. Now, Mr. Nehring, I hand you a document which has [fol. 690] been marked as Government Exhibit 430 for Identification, and ask you again, sir, if that is one of the letters to which you refer?

A. It is.

Q. What is the date of the document?

A. January 28, 1958.

Q. And to whom is the letter addressed?

A. J. B. Holloman, Aluminum Company.

Q. Now, Mr. Nehring, are there any statements in this letter which were not true at the time you wrote the letter?

A. Not unless it is about cents per pound, because there were many quotations in it and we don't know what customers tell us, we are not always sure of it.

Q. In other words, where you have quoted or stated in the third line of this letter, you said, "... we should have a rod price from 4 cents to 6 cents a pound lower than the present price of aluminum rods." You figure 4 to 6 might not be completely accurate?

A. When it was being sold before way below market, but we never found ALCOA quoting anything like that because I figure they have more support than any company in the game, including my own company. I actually do.

[fol. 691] Q. Now, Mr. Nehring, directing your attention to the second line of this letter, the sentence begins, "According to the going price of aluminum cable and for us to meet the highest price . . . '?

A. That is a mistake. That should be the "lowest."

Q. I see, that is what could be a kind of typographical error?

A. Yes.

Q. With that exception, Mr. Nehring, are there any mistakes or errors in the letter?

A. Here I said something about copper varied 2½ cents. That isn't very often. Now and then we have the same thing with copper. We buy it cheaper than domestic producers. We did it on aluminum but it didn't work.

Mr. Mahaffie: I offer-

The Witness: Not only did ALCOA but all of them.

Mr. Mahaffie: I offer Government's Exhibit 430 in evidence.

Mr. Bergson: No objection. The Court: Received.

(Government's Exhibit No. 430 for Identification received in evidence.)

# [fol. 692] By Mr. Mahaffie:

Q. Mr. Nehring, I hand you a document which has been marked as Government's Exhibit 431 for identification and again, sir, I ask you if that is one of the letters to which you refer?

A. Yes, to Holloman, Aluminum Company, February 13, 1958.

Q. All right, sir, are there any statements in this letter which were not true at the time you made them?

A. No, I guess not. Yes. When there was a shortage of steel, I had plenty of steel coming in. Eventually we had orders by the carload and I couldn't use it and I asked ALCOA to help me out. I furnished the steel and they furnished the aluminum and labor and shipped direct to our customers. Here I refer to copper being a little cheaper by—you know, maybe sometimes I would get it from smelters or refiners, on copper only.

Q. Well, the statements in this letter are-

A. Just about correct, yes. Just a little difference in figures.

Q. Other than the matter of difference in figures.

A. These prices will vary often when somebody starts cutting the price, and when the Government bought eleven [fol. 693] or twelve million pounds and Reynolds Metal was over one hundred thousand below the biggest bidder. The wildest thing I saw in my sixty years of business.

Q. This is in this recent year?

A. Yes.

Mr. Mahaffie: I offer Government's 431.

Mr. Bergson: I have no objection to the admissibility of the document as such, but I do object to the second sentence in paragraph 2 which is obviously hearsay.

The Court: What does it say?

Mr. Bergson: It says "It appears that the market is rigged against us, and we are talking plain about it."

The Court: Yes, we better keep right out of this case.

You don't care about that.

Mr. Mahaffie: No. sir. I am not offering it to prove that the market was rigged.

The Court: All right.

Mr. Bergson: No objection under those circumstances. The Court: All right, received.

[fol. 694] (Government's Exhibit 431 for Identification received in evidence.)

### By Mr. Mahaffie:

Q. Mr. Nehring, I hand you another document which has been marked as Government Exhibit 432 for Identification, and again I ask you, sir, if this is one of the letters to which you referred?

A. Yes. Aluminum Company. J. B. Holloman, February 27, 1958.

Q. Now, directing your attention, Mr. Nehring, to the second paragraph, second sentence, which reads, "This is due to the spread between rods and finished aluminum cable, and the spread of about 8½ cents a pound between the ingots and rods." Is that sentence correct as written?

A. Probably close to it. But you see these other companies selling it, you know what we call a white sale or buyer's market. Aluminum Company never cut price that I ever found out. But, as I said, it was mainly to satisfy their salesmen.

Q. Are the statements made in this letter of February 27, 1958, or were those statements true at the time they were written?

A. Well, yes. There isn't anything to it, except telling you why we are, why we couldn't buy rods because prices are so low. What is this last one here?

[fol. 695] Q. Excuse me, sir.

A. (Hands document to counsel)

Mr. Mahaffie: I offer Government's Exhibit 432.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit 432 for Identification received. in evidence.)

Q. Mr. Nehring, I show you one more letter which has been marked as Government's Exhibit 433 for identification. I ask you if this is one of the letters to which you referred!

A. Yes. J. M. Holloman, Aluminum Company of America, April 17, 1959.

Q. Are the statements contained in this letter, or were those statements true at the time they were written?

A. Well, I don't just remember this. This is something about error in quotation and it was revised and requoted by them.

Q. What about the second paragraph, sir; is that correct?

A. Yes. When there is any price war on we always made money with the spread, whatever it was, in both copper and aluminum.

[fol. 696] Mr. Mahaffie: I will offer Government's Exhibit 433.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit 433 for Identification received in evidence.)

The Court: Are you through with the letters, Mr. Ma-haffie!

Mr. Mahaffie: I am finished with direct examination,

The Court: All right. We will recess until 2:15. The Clerk: The Court is in recess until 2:15.

(Whereupon, at 12:55 p.m. o'clock, an adjournment was taken to 2:15 p.m. o'clock of the same day.)

[fol. 697]

AFTERNOON SESSION

APPEARANCES: Same as the Morning Session.

Mr. Mahaffie: The Government has no further questions of this witness, Your Honor.

The Court: All right, cross-examination.

Cross-examination.

## By Mr. Bergson:

Q. Mr. Nehring, you said you have been in the wire and cable business 50 years?

A. Yes. Worked in it a total of 60 years.

Q. Sixty years. My word. When you first went into the wire and cable business what metal did you use as conductor metal for your product?

A. Copper only:

Q. When did you first start using aluminum as a conductor metal?

A. Well, I believe nearly 25 years ago. We were second in the States to make it.

Q. That would be in the 1930s?

A. Oh, no, probably 1935 or a little later. We wanted to start it earlier but ALCOA says, "We're the only rod makers," and they were the only ones. They said, "You [fol. 698] better not start it. It will look as though we can hold up the price on it."

Q. When you began making aluminum wire and cable did you use the same machinery you had used in making

copper wire cable?

A. Yes, only a different solution for drawing and cooling.

Q. At the present time, is your equipment interchange-

able so that you can draw strand and cover copper on the same machines that you do with aluminum?

A. Yes.

Q. In your direct examination you were talking about the purchase of rods. Aluminum rods. Who supplies aluminum rods to you?

A. Well, ALCOA aluminum company. SouthWire. Kaiser, some, but not really. They make it differently, and they are so far away I guess they don't have too much capacity. And Anaconda Aluminum Company. Had very little from them.

Q. Do you buy a substantial quantity of rod from South Wire?

A. Oh, yes, like a hundred thousand pounds at a time, or more, and sometimes fifty.

Q. Fifty thousand?

A. Yes.

Q. You know that this case concerns the acquisition of [fol. 699] Rome Cable by ALCOA?

A. So I understand.

Q. That acquisition, in case you don't remember, took place in March and the first part of April, 1959. Has that acquisition had any effect on your business?

A. Not at all, no.

Q. Mr. Nehring, during the course of the Government's investigation of this case, were you asked to supply certain statistical information to the Government?

A. I don't recall of any, no.

Mr. Bergson: Would you mark as Defendants' Exhibit AR-10 for Identification a letter dated August 19, 1960, from Nehring Electric Works to Mr. Samuel Karp of the Department of Justice, Washington, D. C., which letter was signed by, for the Electric Works, by Paul Nehring, Jr., Vice-President?

(Letter dated August 19, 1960, marked as Defendants' Exhibit AR-10 for identification.)

Q. I show you defendants' Exhibit AR-10 for identification and ask you if that signature is the signature of Mr. Paul Nehring, Jr., who is your son, I take it?

A. Yes. What is the date?

Q. August 19, 1960. That letter has attached to it

[fol. 700] a tabulation of figures showing Nehring's production in bare aluminum wire, insulated aluminum wire, and cable and bare ACSR?

A. Yes.

Q. And bare aluminum cable; is that correct?

A. Well, I don't know. It seems we make some reports out about aluminum. It is very simple for us to do, but I don't know offhand who to, and I have been out of the office quite a while.

Q. It looks like they did it here anyway.

A. Who is this to?

Q. To the Department of Justice. Now, this tabulation which is attached to the letter just mentioned, shows that in the year 1958, your shipments of aluminum wire and cable were 1,094,000 pounds; is that right?

A. Well, I imagine it is, because I know there was one

year when it was very slack.

Q. And in 1959, the year of the merger, three-quarters of which was after the merger, shows 4,473,000 pounds. And the first quarter of 1960 shows 902,000 pounds?

A. That's right.

Mr. Bergson: I think that is all. Thank you. Wait a minute, the Government may have something.

[fol. 701] Mr. Mahaffie: Just one moment, Mr. Nehring.

Redirect examination.

## By Mr. Mahaffie:

Q. Mr. Nehring, with reference to this document which was marked as AR-10 for Identification, I wonder, sir, if you would look at the tabulation that Mr. Bergson referred here to and state the total shown for the year 1957? You recall Mr. Bergson asked you to state '58 and '59.

A. 4,079,000 in '57.

Mr. Mahaffie: Thank you, sir. No further questions.

(Witness excused.)

Mr. Melchior: Mr. Roger Schoerner.

ROGER J. SCHOERNER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

### By Mr. Melchior:

Q. Will you state your full name and your place of employment?

A. Roger John Schoerner; Southwire Company, Carroll-

ton, Georgia.

Q. What is your title with that company?

[fol. 702] A. Vice-President.

Q. And how long have you been employed by that company?

A. Since its inception in 1950.

Q. Did you have any prior experience in the wire and — field?

A. Yes.

Q. Prior to your employment with Southwire?

A. I worked with Anaconda Copper Company in Hastings-on-the-Hudson, New York.

Q. Where is Southwire located?

A. In Carrollton, Georgia, 50 miles due west of Atlanta.

Q. In general, what are the line of products sold by Southwire, in a general way?

- A. We generally manufacture a line of products commonly known as transmission and distribution, and also building wire; some alloy products, in the alloy field, some mechanical. Principally we are in the electrical transmission and distribution field.
  - Q. Do you sell E.C. rod?

A. Yes, we do sell E.C. rod.

Q. Do you sell service drop cable?.

A. Yes, we do.

Q. Would you state what service drop cable is?

[fol. 702a] A. Service drop cable is a term generally referred to for the cable that comes from a power pole/to the weather head on house.

[fol. 703] Q. Would you describe its construction?

A. The most popular construction is one currently being made with aluminum, two insulated conductors insulated with any of several materials and one bare neutral. It is commonly triplex. It also is made in duplex and quadruplex, but is commonly referred to as triplex.

Q. Under this construction, the wires are twisted?

A. Twisted together, yes.

Q. And you describe this as service drop cable?

A. Yes.

Q. Are there any other types of wire or cable that are sometimes used as a substitute for this same purpose?

A. Yes, there are other constructions that are used, and this construction is one that generally replaces an item we still sell some of, which is known as service wire. This was usually in copper weatherproof construction, but it also is currently made with some other newer insulating materials.

Q. What would you describe this other product as? [fol. 704] A. Weatherproof wire.

Q. Wire, as opposed to cable?

A. Generally, yes.

Q. What is the difference between wire and cable, if you know?

A. They are terms that are by different people used perhaps in a different way. Generally we would think of cable as a multi-conductor, or a stranded, larger unit, and wire would generally be construed as being a solid type single conductor.

Q. What are the approximate sales of your company

annually?

A. They have grown regularly. Last year they were something over twenty million dollars.

Q. And what is the area in which your company operates?

A. We concentrate in the Southeast. However, we do sell in nearly all of the states.

Q. And where are your plant or plants located?

A. In the states we just have one plant, it is located at Car---lton, Georgia. We have a small subsidiary operation in Brazil.

Q. I believe you stated among the products your company manufactures and sells EC rod?

[fol. 705] A. Correct.

Q. What raw material do you use in making EC rod?

A. We purchase 99.5 grade aluminum pig and/or ingot

as it is sometimes referred to. It would be commonly referred to as high purity ingot.

Q. I see. Where do you purchase this commodity!

A. From prime producers both in this country and in the world marketplace.

Q. You purchase this product overseas also?

A. Yes.

Q. How long have you been purchasing aluminum ingot overseas?

A. Oh, perhaps eight or nine years. When aluminum was difficult or was short in supply, back in the early fifties, we first started purchasing on the foreign market.

Q. You had difficulty securing supplies from domestic

producers?

A. Yes, we did.

Q. You went overseas to secure supplies?

A. Yes:

Q. Are you still purchasing quantities overseas?

[fol. 706] A. Yes, we are. There was an interim period, however, where we purchased most of our product raw materials domestically, but more recently we have again been purchasing considerable quantities on the world marketplace.

Q. During what period of time was this when you were purchasing most of your materials from domestic pro-

ducers ! ..

A. I would guess it was after Korea, between, oh, perhaps 1954 and 1957. In this period.

Q. During this period you were in a position to secure ample supplies from domestic producers?

. A. Yes.

Q. Then did you begin securing supplies from foreign producers again?

A. Yes.

Q. At what period of time?

A. I believe in 1957 we may have started rather heavily again. In 1958 on through to the current time.

Q. You are still procuring substantial quantities over-

A. Yes.

Q. Would you explain why you buy ingot overseas rather than from domestic companies?

[fol: 707]. A. Right now the price is cheaper, and the quality is in some eases, the purity is higher; but generally I would say price is the main factor.

Q. Price is the main factor?

A. Yes.

Q. Now, are there any problems, from a business standpoint, in your view, in procuring primary aluminum from

foreign producers?,

A. There are one or two. The main objection is in dealing with some customers who have a feeling about our purchase specifications, and this presents a problem in some cases.

Q. Do you feel this feeling on the part of your custom-

ers in any way affects your sales to them?

Mr. Bergson: I object to the form of that question.

The Court: Yes. If I understand the question you are asking him to give a feeling not of himself but of somebody else.

Q. I will rephrase the question. Have any of your customers ever expressed to you a view with respect to purchasing from you rod or other product made from foreign produced aluminum?

A. Yes, they have.

[fol. 708] Q. What have they stated?

Mr. Bergson: I object, your Honor.

The Court: Well, we better have the time, the place and so on. Nobody can meet such a statement without any basis.

Q. Do you recall a specific incident when a particular customer may have made a comment with respect to for-

eign ingot to you?

A. Yes, we just happen to have had one in about the last two weeks where a customer was questioning our source of supply, and in this particular case we have not completely satisfied him that our quality and service will be adequate. However, I am certain we will convince him that our product will meet specifications and will perform adequately.

Q. Did his question have to do with the fact of foreign

produced ingot?

A. Yes. it did.

Q. Do you presently have any supply contract for the purchase of aluminum inget from domestic producers?

A. We are purchasing domestic, but we do not have any regular supply contract.

[fol. 709] Q. Have you ever acquired aluminum ingot from Alcoa?

A. Yes, we have.

Q. Can you state—excuse me.

A. Well, I presume you want to know when.

Q. That's what I was going to ask.

A. In our early years we purchased some rod from Alcoa, and when we started on rod mill we purchased pig from Alcoa, or I should say through Alcoa. I believe nearly all of our material we obtained from Alcoa was available to us in government set aside programs how-

Q. Would you explain what this government set-aside

program is, if you know?

A. I am just a little bit hazy on it at the moment, but it hinged around new facilities that were obtained through fast tax write-offs either during Korea or prior to Korea, and I believe it was in a small business set-aside that we participated. I am frankly a little bit hazy on whether it was a small business set-aside or not.

Q. Is it your understanding that the aluminum you acquired from Alcoa during this period came pursuant

to those government requirements?

[fol. 710] A. Yes, I recall most of our-well, most of our orders or all of our acknowledgments clearly defined this was not Algoa metal, but was set-aside metal.

Q. I see. Do you know whether or not Alcoa ever sold

to you aluminum pig which was not set-aside pig?

A. I believe they have sold us some small quantities: My recollection is, however, that they were very small in relation to our requirements.

Q. Did you desire to purchase from them larger quantities than you did secure from them?

A. We have on several occasions, yes.

O. What was their response to your request for supplies of aluminum?

A. Well, generally their pig and rod, or aluminum was

used in their own fabrication operations, and it was my understanding they were preferring to sell a finished product rather than back at the pig stage.

[fol., 711] Mr. Bergson: I move to strike that answer, Your Honor.

The Court: Well, it is not quite responsive. No time fixed for it at all. I don't know whether this is now under, the pressure of war time.

Mr. Melchior: I will inquire of the witness.

The Court: Yes. When this comes in like that it proves nothing to me.

### By Mr. Melchior:

Q. Can you state the period of time, the approximate period of time when you did acquire, or attempted to acquire from ALCOA aluminum pig, other than set aside pig.

A. Well, the period immediately following, the first time was back, right after Korea, I would say, was the first time when ALCOA handled their sales program on an historical purchasing basis and we, of course, had no purchasing pattern. And at various times during periods of shortage we attempted to secure raw materials from ALCOA and other prime producers.

Q. This was generally during periods of shortage, you

say?

[fol. 712] A. Yes, generally it was in periods of shortage. In periods of over-supply or of an excess of aluminum, ALCOA has offered pig to us and has offered pig contracts to us.

Q. Have there been a number of times since Korga when aluminum pig has been in short supply, to your knowledge!

A. There was one period, I believe, the pig did not become in over-supply until 1957 or '58. Until then pig was either in balance or in short supply.

Q. Who were your most significant competitors in the field of aluminum wire and cable, Mr. Schoerner?

A. There are eight or nine of them, all of the prime producers, or nearly all of the prime producers, ALCOA, Kaiser, Reynolds, General Cable, Anaconda, Olin, Nehring, Central Cable.

Q. Now, which of those competitors that you have listed are not producers of primary aluminum or primary copper?

A. Central Cable and Nehring Electrical.

Q. And all the other competitors that you have listed are primary producers of either aluminum and copper, or both?

A. In the case of General Cable, I believe it is not a direct relationship but through intercompany [fol. 713] common stock ownership.

Mr. Bergson: I think it is conclusory on the witness' part.

The Court: Yes. If he doesn't know. I think you better say, Witness, because I can't do much with a statement "I believe" something. I don't know whether it is true or not.

Q. Do you know whether General Cable has-

A. I know there is a relationship between General Cable and A.R. & R. and Revere.

Q. What sort of a relationship?

A. I don't recall the exact percentage, but I believe it is about a 25 per cent ownership.

Q. Is this a stock relationship?

A. Yes.

Q. But you are not sure what the precise stock relationship is?

A. No. The others are prime producers.

Q. I see. Now, how do you purchase domestically produced aluminum ingot?

A. On a delivered price basis, price in effect at the time of shipment.

Q. I didn't hear your last statement.

A. Price in effect at the time of shipment.

Q. At the time of shipment? [fol. 714] A. Yes.

Q. Do you buy on a pound or ton basis?

A. Usually by the pound.

Q. By the pound?

A. The million pounds.

Q. And you buy it in ingot form, is that it?

A. Yes.

Q. Now, how do you sell your aluminum wire and cable,

which is made from the primary ingot?

A. We sell it on a delivered basis. The pricing books would generally say price in effect at the time of shipment, but for competitive reasons in recent years firm prices are usually or frequently developed.

Q. I am not sure I understand your last response.

A. A large number of our sales are on a firm price basis. Some are in effect on a price firm shipment.

Q. Is that firm at the time of making contract?

A. Yes. Generally the contracts would be firm against increase, but with an acceleration down, if the market goes down or competition moves the market down.

Q. Are we to understand when you make a sales contract for the sale of aluminum wire and cable, it is firm

except in certain circumstances?

A. Yes.

[fol. 715] Q. Will you explain that?

A. Firm against increase is another way of saying it.

Q. You can't increase the price?

A. That's right. But if the market goes down you

would be expected to meet market prices.

- Q. I see. On occasion has the market gone down since you have made a so-called firm contract for aluminum wire and cable?
  - A. We have had cases, yes.
  - Q. Have you found it necessary to drop your price then?

A. Yes.

Q. In purchasing your ingot do you have the same option? Is that a firm price?

A. On domestic pig.

Q. And ingot has been sold on the price in effect at the time of shipment basis?

A. At the time of shipment.

Q. Has the price of ingot gone down materially during the period since you have been in business from 1950 to date?

A. No. General trend has been up since 1950.

Q. I see. Is the price of ingot today higher than it was in 1950, domestic ingot?

A. Yes.

Q. What would you say as to the price of aluminum wire

and cable generally today as compared to what it was in

[fol. 716] the market in 1950, if you know?

A. Well, the price is considerably higher than it wasin 1950. However, in relation to the price of ingot the differential has many times been narrowed, if I make myself clear.

Q. Does this mean that your opportunity for profit has been lessened in any way?

A. Yes.

Q. Now, you listed a number of wire and cable products that you manufactured, and I believe you listed transmission and distribution wire and cable?

A. Yes.

Q. Both aluminum and copper?

A. Yes.

Q. And building wire?

A. Yes.

Q. Service drop!

A. Yes.

Q. Service entrance?

A. That is correct.

Q. Does this make up pretty much the bulk of your sales

A. Yes, plus rod. We sell E.C. rod. We also handle copper rod.

Q. Directing your attention solely now to conductor [fol. 717] wire and cable as opposed to rod?

A. Yes. This constitutes the majority of our sales.

Q. And who are your customers for the majority of these products?

A. Electrical utilities.

Q. Electrical utilities. Now, if you can, will you state what the most important factor of cost is involved in the manufacture of aluminum wire and cable?

A. The cost of aluminum.

Q. The cost of the aluminum conductor?

A. Right.

Q. I am going to ask you to estimate, if you can, in the rough percentage, as to approximately what the percentage may be. I know it would vary from wire to wire, but in general?

A. Oh, 75 to 80 per cent.

Q. I am directing your attention to copper wire and cable products, which you sell, could you find an estimate as to what the approximate share of the total sales price may be made up of the metal conductor?

A. Approximately the same. Perhaps a little higher.

Q. I see.

A. Perhaps 85 per cent.

Q. Now, over the years that you have been in the conductor wire and cable business, you have changed your [fol. 718] price on aluminum wire from time to time?

A. Yes, we have.

Q. Generally, it prompts a change in the price of aluminum conductor wire, what would be the most significant factor which would bring about a change?

A. Well, one factor, of course, is the price of base metal.

the price of aluminum pig.

Q. Aluminum pig?

A. Yes.

Q. And that is an important factor?

A. Oh, yes.

Q. If the price of pig goes up, would it be expected the price of your aluminum wire and cable products would go up, if other factors remain the same?

A. Yes.

Q. Now, directing your attention to copper wire and cable, what would you say the most important cost factor in the production of copper wire and cable is?

A. The base metal, the copper.

Q. The copper. In other words, if the cost of the electrolytic copper goes up, other factors remaining the same, what would happen to the price of copper conductor wire?

A. It would generally go up.

[fol. 719] Q. Now, can you generally compare the price of conductor wire and cable made of aluminum with the price of conductor wire and cable made of copper and tell me if you would compare conductors which would do the same approximate type of job or what the price relationship between the two would be? Is one higher than the other or are they about the same?

A. No. Aluminum would be considerably cheaper on an

equal job basis.

Q. In other words, to do a particular job if you were

buying aluminum conductor or copper conductor, do I understand your answer to be that aluminum would be considerably cheaper?

A. Yes. In many cases half the price.

Q. I see. Now, I would like you to tell me what would happen if we had this type of aluminum conductor and copper conductor to do a particular job, and the price of the copper conductor went up, would the price of aluminum conductor necessarily follow from your experience?

A. No.

Q. In other words, is there much relationship between the price of the aluminum conductor and the price of the

copper conductor?

[fol. 720] A. I don't feel there is any direct relationship. Of course, the general economic conditions that might affect one metal might be affecting the same metal, but I think item by item, I don't think there is any relationship.

Q. In other words, the response of the copper metal and aluminum metal is not very great. Is that your conclusion?

A. Yes.

- Q. Now, you said that I believe a large percentage of the wire and cable products that you manufacture are sold to utilities, and among these products which you sell are transmission wire and cable, distribution wire and cable?
  - A. Yes.
  - Q. And service drop?
  - A. Yes.

Q. Wire and cable. Now, from your experience in selling these products to utilities and others, to what extent is the wire and cable that you sell for overhead transmission made of aluminum?

A. Aluminum has virtually taken over 100 per cent of the market, or say nearly 100 per cent.

Q. For overhead transmission?

A. Yes.

[fol. 721] Q. Would you make the same comment with respect to the wire and cable you sell for overhead distribution?

A. It has taken over a large portion, but I would, I do not feel it is quite as much. There still is some copper used and maybe 80 per cent aluminum or 90 per cent aluminum.

Q. 85 or 90 per cent would be aluminum?

A. Yes.

Q. Now, with respect to service drop cable, which you earlier described as being of the multiplex or triplex variety, to what extent is the wire and cable of that sort you sell made of aluminum?

A. Well, in our case it is virtually above 90 per cent now. A very large per cent. Probably as much as 95 per cent.

Q. And the service drop cable is the type of cable that is used overhead?

A. Yes.

Q. Now, directing your attention to insulated and covered distribution wire and cable made from aluminum—strike the question, please.

Do you ever sell aluminum wire and cable products in

conjunction with other products?

A. Yes, we do.

Q. To what extent do you sell this?

[fol. 722] A. Well, we try to, this is one of our selling points, we try to sell with copper, steel, cable accessories, ground wire, and this would be the general categories.

Qr. This is a means you have of doing business?

A. Yes.

Q. You feel that you can make sales more easily by offering your customer a broader line of products?

Mr. Bergson: That is a leading question, Your Honor. The Court: Well, overruled. I will take it.

Q. You may answer the question.

A. Yes.

[fol. 723] Q. Are these accessories that you sell in conjunction with your conductor wire and cable important products in your sales effort?

The Court: Financial-wise, or what do you mean, important?

Mr. Melchior: From a sales standpoint.

The Court: You mean dollars?

Mr. Melchior: Dollar-wise.

A. I feel they should be and could be. More recently our accessory volume has not been in relation to our wire volume.

Mr. Bergson: I don't think that is a responsive answer.

Q. I am not sure what your answer was.

A. Would you give me that question again, please?

- Q. All right. Are the accessories which you sell along with your conductor wire and cable products from a monetary financial standpoint an important part of your business?
- A. At the present time our accessory sales are not an important part of our business. In past years they have been an important part.
- Q. Now, do you manufacture very many of these [fol. 724] accessories which you sell?

A. No, we do not.

Q. How do you procure these?

- A. We purchase them from either Alcoa-or, I should modify that-in that we obtain them through Alcoa currently as an agent on an agency agreement sale rather than a purchase sale, and from four or five other independent fabricators of accessory items to round out our line.
- Q. How long have you been purchasing these products? A. Oh, ever since we started in 1950. When we first started. We started purchasing accessory items to round out our line.
  - Q. Who did you purchase them from in 1950?
  - A. We purchased them nearly exclusively from Alcoa.
- Q. What percent of your purchases back in 1950, 1951, 1952, the early years of your company, what percent of your accessories did you purchase from Alcoa, if you know?

A. We purchased the majority-I would guess 80 per-

cent Alcoa, 20 percent other suppliers.

- Q. Were there very many suppliers of accessories [fol. 725] in those days of this type?
- A. I believe Alcoa was the only company producing a complete line of aluminum accessories.
- Q. Now, have you continued to purchase these accessories from Alcoa continuously from 1950 on?
- A. No. Some few years back, I would just guess perhaps 1956 or 1955, somewhere in there Alcoa changed its sales policy and instead of selling us accessories for resale, set us up as an agent and we then handled their accessories on an agency basis.

Q. From your standpoint, do you consider this as satis-

factory as purchasing the accessories outright?

A. No, this is a very undesirable arrangement as far as we were concerned, because it put us in the same pricing basis as the distributors to whom we had to sell the products, so it virtually removed any element of profit for our company.

Q. Have you since that date been able to buy these accessories from Alcoa, to purchase them as opposed to this

agency arrangement?

A. We have not.

Q. You have not. Are you still acting as agent for Alcoa in this respect?

[fol. 726] A. Yes, we are.

Q. Now, are there other producers or other sellers of

accessories in this country?

\*A. Yes, there are. I don't believe any of them have as complete a line, but by purchasing from two or three other suppliers, the whole line now can be developed to be competitive.

Q. By resorting to purchases from several, two or three companies, you can work out a full line of accessories?

A. I believe that's correct, yes.

Q. Is that your testimony?

A. Yes.

Q. Does Alcoa still have a full line of accessories? Does it still offer a full line of accessories?

A. Yes.

Q. But does not offer them for sale to you; is that correct?

A. That's correct.

Q. Now, does the fact that you must acquire accessories from Alcoa on this agency arrangement, or the fact that you have to, in order to get a full line of accessories, pur[fol. 727] chase from two or more companies in order to get all your requirements—does this affect you in your business in any way? Does it affect your profit?

Mr. Bergson: Your Honor, I can't fathom the relevancy of this acquisition.

The Court: Well, I can't either.

(The pending question was read by the reporter.)

Mr. Melchior: We are trying to show, your Honor, that in order for South Wire to compete effectively in getting wire and cable contracts it will be necessary on occasion for them to offer not only conductor wire and cable but these very valuable and necessary accessories. Now, South Wire does not produce these accessories, South Wire must acquire them from others. According to the testimony, the only company domestically who has a full line for sale, or who manufactures a full line, is Alcoa. And Alcoa, of course, according to the testimony, will not make these available to South Wire except under an agency arrange-[fol. 728] ment. And we think this is another indication of some of the practices utilized by Alcoa and other integrated companies in a manner which affects market conditions and makes life more difficult, makes it a competitive life for non-integrated producers of wire and cable, and precarious and difficult. This is the relevance of this line of questioning.

The Court: It is quite a ways out in left field.

Mr. Melchior: We feel it is directly involved, because— The Court: Look at all the rest of these companies in this country in the same position as South Wire.

Mr. Melchior: I am not so sure there are so many com-

panies left in this position.

The Court: I realize no company is exactly alike. This gentleman testifying this morning that had the Rigid Conduits it your argument that he should have this com-

plete line of accessories?

[fol. 729] .Mr. Melchior: No. What we are trying to show by most of this testimony, your Honor, is this. We are first trying to show, we are going to try to show market conditions in the wire and cable field, and after we have shown what the competitive impediments and hazards faced by the non-integrated producers in this field are, we will then attempt to show that the dominance of Alcoa against the backdrop of these competitive conditions is magnified by the addition of Rome's facilities to Alcoa's. In other words, we look at the economic conditions first, and then see what the addition of Rome to Alcoa will do to it.

The Court: What is the question?

(The pending question again read by the reporter.)

#### By Mr. Melchior:

Q. Do you understand the question, Mr. Schoerner?

A. I believe so.

Q. Can you answer it?

[fol. 730] A. It has affected our profits in the past, yes.

Q. Can you cite to the Court any specific instances wherein your inability to secure adequate supply, adequate and timely supplies of accessories may have been instrumental in your losing a particular contract?

Mr. Bergson: I object, your Honor. That is highly speculative.

The Court: Sustained. Every day, in every business in the world, I suppose that happens. I don't see how that gets down to what we are involved in here.

Mr. Melchior: Well, the question was-

The Court: If a contractor can't get a steamshovel, he may lose a contract. I suppose it happens every day. I can't think of a business in the world where it doesn't happen.

Mr. Melchior: But here we have the situation where, if the witness would be permitted to testify, he may be able to show that he could not bid successfully on a particular [fol. 731] contract because he was unable to procure accessories and Alcoa was the company that had the key to that.

The Court: Well, I don't know how tight a key they have got. This witness tells us he can get the same things by dealing with two or three other companies. By taking part of a line from Kaiser, part from Reynolds, part from somebody else, he has the same thing.

Do these other companies also work on this agency agreement too?

The Witness: I don't know. I believe not. As far as I know, none of the others do.

The Court: So that as far as you know, you can obtain these accessories by an arrangement with any two or three of those companies whose combined merchandise would cover the whole line of accessories.

The Witness: Yes, it is possible, in many cases it is difficult, and some cases impractical, but it's possible and we have done it. By Mr. Melchior:

[fol. 732] Q. Is it more expensive to do it?

A. Yes, it is more expensive.

The Court: Why is it more expensive?

The Witness: Well, one time I spent nearly a week of my personal time trying to put together a little package, between Italy and the States and all around, so that it becomes a much more cumbersome way of doing business.

The Court: Oh, sure, we all know you get into those kind of things where you deal with Italy, Germany, or somewhere else. If you only have to spend a week of your time on it, you are lucky.

Mr. Melchior: We think the important thing in this testimony, your Honor, is that the company has to go overseas to get these products when there is a company who has—

The Court: Counsel, you are off on another tangent again. We are not overseas at all. All we are talking about is an [fol. 733] agency agreement whereby a full line can be obtained, and a private agreement or a personal agreement from two or three, where the same thing can be obtained. That's all we are talking about.

Mr. Bergson: I have heard Mr. Melchior on two or three occasions during this trial talk about the trials and tribulations of going overseas. I don't know of anything in the anti-trust laws that says you have got to go overseas or you don't have to go overseas. If it is there, it is there. It doesn't make any difference where.

The Court: We haven't heard so much about trials and tribulations. Business is full of trials and tribulations just like judges, I suppose. It requires as much effort to make up some packages as it does others. I would like to get down, and perhaps you are; I don't want to find any fault; this case has gone fast. I am having an awful job equating an awful lot of this evidence to the real problem you've got. [fol. 734] You've got three problems. Lines of commerce, market, effect on competition. That's what you have got.

Mr. Melchior: Well, we submit that the probable effect on competition must be judged in the light of market conditions as they exist now, as they may exist in the future, and what the impact of Alcoa's position is in this market-place.

The Court: Oh, yes, we have to go into it. It seems we are a long ways away from it in a good many instances. A minute ago you were making a statement about trials and tribulations in the foreign field.

Mr. Melchior: This was Mr. Bergson that made that state-

ment, your Honor.

The Court: I thought you did. Well, go ahead with the lawsuit.

### By Mr. Melchior:

Q. I believe you testified earlier, Mr. Schoerner, if I recall correctly, that your prices, your selling prices generally of aluminum wire and cable since 1950 have been generally in which direction—the selling prices of aluminum [fol. 735] wire and cable?

A. Well, since 1950 the prices are up. However, since 157 or '58 the prices have been down.

Q. Since 1957 they have been down.

A. Yes.

- Q. Now, what has been the price trend, if any, on the price of the raw material which you purchase to make the aluminum wire and cable—that is the ingot?
  - A. It has been generally up.
  - Q. It has been generally up?

A. Yes.

Q. The raw material prices have gone up, and your selling price of aluminum wire and cable has gone down. What has been the effect, if any, upon your profits in these lines?

A. It has had an adverse effect. It has made it difficult

to continue to make a profit.

Q. Now, I suppose during this period when your profits were being squeezed, you made every effort to cut down costs?

Mr. Bergson: I object, your Honor.

The Court: Well, no, there isn't a businessman in the [fol. 736] world that would say no to that. He is always trying to cut down costs.

The Witness: That's correct.

The Court: And the more efficient the company is the more they cut down costs and devise new methods and so on. Why, of course, that man will increase his profits,

where a slip-shod competitor will go out of business; isn't that a fact?

The Witness: We like to think so.

The Court: All those things are so common; so well understood. They don't need constant repetition.

## By Mr. Melchior:

Q. Have you ever attempted to reduce your production costs by purchasing hot metal?

A. Yes, we have.

Q. What is hot metal?

A. It is molten metal taken directly from a pot line or a holding furnace, before it has been permitted to solidify.

Q. Is this the liquid form of the ingot?

A. Yes.

Q. Who would you buy the hot metal from? [fol. 737] A. I would have to be purchased from a prime producer.

Q. From a prime aluminum producer?

A. Yes.

Q. Now, does hot metal, as sold on the marketplace, sell at a lower price than ingot, aluminim ingot?

A. Yes.

Q. If you know, can you tell me what the difference in price is!

A: I read one testimony some years ago, I believe it was 17 percent. Approximately 17 percent.

The Court: The question is, do you know. I suppose he means now. Do you know the difference in the price?

The Witness: I don't know exactly the difference in the price.

Q. Do you know that the hot metal today can be bought c'eaper than at the price of the ingot?

A. Yes.

Q. You know that?

A. Yes.

Q: Have you ever made any attempts to purchase hot [fol. 738] metal in order to reduce your own production expenditures?

A. Yes.

Q. Can you tell me with what success?

A. We were unable to obtain any commitments to deliver hot metal to the trucks.

Q. Did you approach Alcoa?

A. Yes, we approached Alcoa, Kaiser and Reynolds,

Q. The three primary producers?

A. Yes. -

Q. Of your own knowledge, do you know whether they sell hot metal to any other companies?

A. They all told me they were selling hot metal to other companies, at least one other company.

Q. But they wouldn't sell it to you?

A. No, because the other companies were not in the wire business. They were not selling any to any people in the wire business.

Q. Did they give you any reason why they wouldn't sell it to you?

A. Not any real reason.

Q. Not any real reason.

The Court: What do you mean by that?
[fol. 739] The Witness: Well, just basically, they took the position that they did not choose at this time to sell hot metal to the wire industry.

Q. They gave you no reason beyond that?

A. No.

Q. Did you indicate that you would have facilities available to take this hot metal?

A. Yes, we did.

Q. Did you offer to transport it yourself?

A. Yes, we did. .

Q. Were there any impediments you knew that you put in the way of these companies to selling you hot metal?

A. No.

Q. Have you ever received a transportation allowance from any of the primary aluminum producers when you were purchasing ingot from them?

A. Yes, we did.

Q. What is a transportation allowance?

A. Well, aluminum, generally the terms, generally were f.o.b. shipping point with full freight allowed to destination, so since we operated our own fleet of trucks, we have always tried to take advantage of the freight cost element [fol. 740] to provide us with a backhaul to our plant, so that we could utilize our trucks coming and going.

Q. Could you effect a cost saving?

A. Yes.

Q. Which of the companies gave this transportation allowance?

A. All the aluminum companies gave this transportation allowance.

Q. Did Alcoa give it?

A. Yes.

Q. Did Kaiser give it?

A. Yes, .

Q. Did Reynolds?

A. Yes.

Q. Do you still get this transportation allowance?

A. We do not.

Q. When did you stop receiving this transportation allowance?

A. I believe it was during 1959.

Q. Was any explanation given to you as to why the al-

lowance would no longer be given?

A. No explanation was given to me that satisfied us as [fol.74f] to the reason for not giving a true transportation allowance.

Mr. Bergson: That is not a responsive answer.

The Court: Was there any explanation given to you, whether it satisfied you or not?

The Witness: Well, really, I believe that there was very little explanation given, if any. The pricing policy was changed to discontinue transportation allowances.

Q. Has this had the effect of increasing your cost of manufacturing rod and aluminum wire and cable?

A. It did for a while, yes.

The Court: What do you mean by that? It did for a while?

The Witness: Well, we have found other ways to offset this.

Q. What do you mean?

A. Well, we are now utilizing the hauling of exempt com-

modifies to make up backhauls to return our trucks to the plant. This has not been quite as satisfactory, but it is an intermediate means of accomplishing the same end.

Q. Do you presently produce EC aluminum rod? [fol. 742] A. Yes, we do.

Q. By what process?

A. By continuous casting and rolling process that is generally referred to by the maker of the equipment called Properzi.

Q. And how long have you been producing aluminum rod in this fashion?

A. Since 1953,

Q. Are there any other aluminum wire and cable companies, to your knowledge, other than the integrated aluminum producers, who are utilizing this process to produce rod today?

A. Electrical conductor, or-

Q. Yes, EC rod.

A. No.

Mr. Bergson: Would you please define what you mean by "integrated aluminum producers"?

Q. Do you know what the term integrated aluminum producers means?

A. I assume you mean the ones that have primary reduction facilities and make their own pig.

Q. That's correct; that's what I mean. Which companies [fol. 743] are these who are integrated aluminum wire and cable producers?

A. Alcoa, Kaiser, Reynolds, Anaconda, Olin, Harvey.

Q. To your knowledge, since 1950 have there been any other companies who have manufactured EC aluminum rod by the Properzi process other than the integrated aluminum producers?

A. Yes, there have been.

Q. I direct your attention to the year 1957. Do you know how many producers there were at that time?

A. Rome Cable, General Cable, Essex, Southern Electrical had a similar continuous casting operation, continuous casting and rolling. I believe that's all.

Q. Do you know whether there is any other company

producing EC rod on the market today, other than South Wire and integrated aluminum companies?

A. There is not.

Q. To your knowledge?

A. To my knowledge.

[fol. 744] Mr. Melchior: You may examine.

#### Cross-examination.

## By Mr. Bergson: .

Q. Mr. Schoerner, when your company went into the wire and cable business in 1950, did it make both copper and aluminum?

A. Yes.

Q. Cables. Did it use the same machinery for drawing, stranding and covering?

A. We could have the same machinery, yes.

Q. You could have. And can these machines be used interchangeably?

A. Yes.

Q. What has been the sales trend of your company since 1958?

A. '58? Are you talking about aluminum?

Q. I am talking about aluminum.

A. 1958 was a very depressed year. Since then our sales have been up appreciably.

Q. And have they improved in '59?

A. Yes.

Q. Improved over '58!

A. Yes.

Q. And improved in '60 or '59?

[fol. 745] A. Yes. ..

Q. And how are they this year, 1961?

A. Improved over '60.

Q. Of course, you know that this case is about the acquisition of ALCOA of Rome Cable?

A. Yes.

Q. Has that acquisition hurt you in your business?

A. To date we could not discern any hurt.

Q. Now, where are you getting your pig and ingot supply today?

A. From prime producers.

The Court: Keep your voice up. The Witness: From prime producers.

Q. Both in this country and I quote "across the seas?"

A. From foreign sources. Some from Canada, which is not across the seas.

Q. I was going to ask whether Canada was across the seas. Have you got a fairly substantial amount of your requirements from Canada and from foreign sources?

A. Yes.

Q. Now, is the ingot that you purchase from Canada and from foreign sources classified as E.C. pig or ingot?

A. No.

Q. It is just a high purity pig? [fol. 746] A. A high purity pig.

Q. And when you cast that ingot and pig, how do you get the rod that is called the EC redraw rod?

A. Although we do not purchase metal as EC, which would be boron treated, we frequently do have, we don't object to receiving boron treated metal, and in some cases we do receive boron treated metal. When we do any, we do treat that boron in our own plant.

Q. You add the boron yourself?

A. Yes.

Q. And the purpose of the boron is to take out of the pig certain impurities that affect the conductivity of the metal?

A. Generally that is so, yes.

Q. Have you ever heard of a company called Thomas & Betts?

A. Yes, we have.

Q. Do you do business with them?

A. We have and do, yes.

Q. Thomas and Betts is a supplier of accessories; is it not?

A. They are.

Q. Don't they have a pretty full line of accessories?

A. I believe now that their line, they were one of the [fol. 747] companies that I was referring to that would make it possible to produce a complete line of accessories competitive with ALCOA.

Q. And when ALCOA Put you on this agency arrangement that you referred to, when was that?

A. I don't recall the exact year. It has been some years

ago. Perhaps five years ago.

Q. Five or six years ago?

A. Something, yes.

Q. Before the merger?

A. Yes.

Q. Have you since the merger expanded your capacity to make aluminum wire and cable products with aluminum conductor!

A. Yes, we have.

- Q. How extensive has it been?
- A. Since the merger, did you say?

Q. Yes.

A. Which was in-

Q. April, 1959.

- A. We have perhaps developed approximately-
- Q. Doubled your capacity since '59?

A. Yes.

Q. Now, when you sell wire, insulated wire and cable products, do you sell accessories with insulated [fol. 748] wire and cable products?

A. Yes, in some cases.

Q. But most accessories sold in connection with the transmission lines are bare ACSR products?

A. And distribution lines.

Q. With the bare?

A. Well, of course, additional accessories are used on the insulated wire. Generally the accessories that we would identify with the ALCOA line of accessories was transmission and distribution.

Q. The bare?

A. The bare, that's right.

Q. Now, I mentioned Thomas & Betts. From what other sources are accessories available?

A. They are available from a company called Bethea; and I know two or three other names, but I just can't recall them at the moment. Ohio Brass, and on the world market place available from an Italian manufacturer, a French manufacturer. The Italian manufacturer has recently entered into an agreement with Kaiser to sell in

this country exclusively, and smaller accessories are avail-

able from Anderson Brass. Is that enough?

Q. I think it is enough, yes. Now, you mentioned [fol. 749] in your direct examination that the price of pig generally has been going up since 1950; but the price of the conductor products have gone up to 1956 or '57, and then they have started to decline; is that right?

A. Yes. Or at least a conversion, or the spread or the

differential has. declined.

Q. Let me ask you this, what form did the last price action in pig take? What it up or down?

A. The last price given was down.

Q. How much?

A. Two cents a pound.

Q. What percentage of the price would that be?

A. 8 per cent.

Q. When you were talking about your difficulties in obtaining domestic aluminum back, you said that they ran after the period of the Korean War, this was a period of about, the shortage that was generated by the industrial activity right after the war; was it not?

A. I believe that is correct, yes.

Q. And wasn't it an abnormal situation?

A. Well, the whole period from our inception in 1950 until—nermal is a very difficult thing to decide. These were difficult days.

[fol. 750] Q. Has there been any shortage say since 1956

or '57!

A. Certainly none since 1958. Or 1957, certainly mone.

Q. And if you chose to buy, if you favored ALCOA With an order in 1957 or '58, they would have complied with your request?

A. Yes.

Q. And probably been glad to sell you?

- A. I believe we did make some nominal purchases in that period.
- Q. But in a period of long supply you didn't choose to buy from ALCOA; you chose to buy from other sources?

A. Our purchases were from other sources. But we certainly did purchase from other sources.

Q. When aluminum was short then you looked to ALCOA for help?

A. We looked to other people for help all during this period. Other people did help us when ALCOA only provided us with set aside metal. I would say that this was one of the considerations favoring other producers.

Q. Wasn't ALCOA set aside metal a pretty substantial

amount of aluminum?

A. Well, I don't know what you mean by substantial. It wasn't the biggest part of our usage at that time. [fol. 751] Q. Wasn't the amount that ALCOA was required to set aside or under their supply contracts, or their contract with GSA, far in excess of any quantity of metal that you might use!

A. You mean in the country? Total industry?

Q. Yes.

A. Oh, yes.

- Q. Now, when ALCOA accepted the orders from you on that set aside basis, they did it on the basis of a historical basis?
- A. I believe the set aside was on the basis of allocation from the Light Metal Division.

Q. It had nothing to do with ALCOA!

A. I am not certain what the relationship was between ALCOA and the Light Metals Division in the set aside contract you mentioned.

Q. The Light Metals Division of BDSA was then—well, BDSA at that time?

A. Yes.

Q. Decided how much each company should get?

A. Yes.

Q. And ALCOA provided that amount?

A. A portion of that amount.

Q. And if they had provided any more they would have [fol. 752] been in violation of the set aside of BSDA; would they not?

A. During Korea, I believe this is correct.

Q. Now, how do foreign prices connect with domestic prices? I think you said they were generally lower?

A. Yes.

Q. How were they sold? How was foreign metal sold? Is that sold on price at time of shipment or is it sold on price at time of contract?

A. It is sold both ways.

Q. How does ALCAN sell?

A. Price at time of shipment, at the moment.

. Q. And who are the other foreign services?

A. By country? I don't know if I could-France.

Q. France is a very significant supplier, isn't it?

A. France is a good supplier. Africa. Norway. Spain.

Q. There are lots of foreign services of aluminum if you want to take the trouble to go and buy it?

A. Yes.

Q. At lower prices than the domestic price?

A. Yes.

Q. Now, let's talk about hot metal for a minute. Do you know whether there is any so-called EC grade of hot metal?

A. I do not believe there would be. To my knowledge [fol. 753] there was no grade EC metal where we were trying to buy EC metal.

Q. You weren't trying to buy EC metal?

A. No.

Q. You were interested in just plain-

A. Hot metal.

Q. (Continuing)—hot metal. Do your know to whom ALCOA sells hot metal?

A. I did know, but I have forgotten it. It was one of

the automotive companies ..

Q. Let me put the question this way: Do you know of any company in this country, regardless of what its business is, other than the automobile companies, that has a hot metal contract with any producer?

A. I know of no companies other than the automotive industry. I might add that we felt we would be eligible for a hot metal contract inasmuch as we were the only red producer at the time that could use hot metal. We were the only rod producers

Q. But in refusing to sell you hot metal, as you say ALCOA did, it was not discriminating against you as between any other type of manufacturer in the United States with the possible exception of the automotive ones; is that correct?

A. That is correct.

[fol. 754] Q. And could you use hot metal in the quantities that the automotive companies use hot metal?

A. I: believe so.

Q. In the million, hundreds of millions of tons a year?

A. In the millions of tons.

Q. Hundreds of millions of tons?

A. I was not aware that their requirements were that substantial.

Q. And now, Mr. Schoerner, you testified on direct examination that by far the major proportion of your sales of wire and cable for transmission and distribution and service drop purposes were in aluminum, used aluminum as a conductor, rather than copper; is that correct?

A. That's right.

Q. Now, how long has this situation existed?

A. Well, aluminum was steadily increasing since we started in 1950. Aluminum was the major factor, but it has continued to take a larger share of the market since 1950.

Q. Has it changed appreciably since 1958?

A. No, I wouldn't say it has.

Q. I have some figures here, Mr. Schoerner. I am not so sure I know what they mean, but I will ask you to ex-

plain them to me.

[fol. 755] Mr. Bergson: Would you mark as Defendants' Exhibit AR-11 for identification a letter from Southwire to Mr. Robert A. Bicks, Assistant Attorney General, Anti-Trust Division, United States Department of Justice, dated November 16, 1960, and signed for the Southwire Company by Harry L. Cooper, General Manager.

(Letter dated November 16, 1960, as identified above, marked as Defendants' Exhibit AR-II for identification.)

## By Mr. Bergson:

Q. I show you Defendants' Exhibit AR-11 for identification and ask you if that is Mr. Cooper's signature!

A. Yes.

Q. Now, would you look at the attachment to this document and there is a tabulation which is entitled "1958—" what is that?

A. It looks like it is "manufactured products by South-

Q. "—manufactured products by Southwire Company." Now, let's look at production code No.—here—120.

Mr. Melchior: May I see what you are looking at, Counsel? What document?

[fol. 756] Mr. Bergson: Yes. It is a document which you furnished us:

Ma Melchior: I know, but we furnished you a number of them.

## By Mr. Bergson:

- Q. Do you mind if I look over your shoulder?
- A. No. No.
- Q. Code No. 120 is copper neoprene line wire.
- A. Right.
- Q. And dollar value in sales in 1958 was what?
- A. Five hundred and ten thousand dollars.
- Q. And in aluminum neoprene line wire, which is the next production number, next item numbered Production 125, what is the dollar volume of sales?
  - A. \$221;000.
- Q. Now, Item, Code No. 130 is copper polyethylene line wire?
  - A: Yes.
  - Q. And the dollar volume of sales was what?
  - A. Fifty nine thousand dollars.
- Q. And the next item is aluminum polyethylene line wire, and the dollar volume for it is how much?
  - A. \$27,000.
- Q. And the next stem is copper vinyl line wire, and the dollar volume is how much?
- [fol. 757] A. Twenty-seven hundred dollars.
- \* Q. And the next item is aluminum vinyl line wire, and the dollar volume is how much?
  - A. Twenty-two hundred dollars.
- Q. So that in each of these instances your dollar olume of sales in 1958 was higher in copper-than it was in aluminum; is that right?
  - A. That is correct. Do you want me to explain now?
  - Q. Well, I don't care, if you want to explain it, go ahead.
- A. Well, in 1958, or the first, was the year of the most vigorous price squeeze in aluminum, and this was our worst year from a spread standpoint. It was this year that our volume dropped in '57, in aluminum, tremendously, and it

was this squeeze which "encouraged" would be the word, us to find other ways of producing aluminum lower so that we could get a proportionate volume of both aluminum and copper business. These percentages are not, I don't believe, typical with the industry usage in total. They represent Southwire's decreasing proportion of aluminum in relation to our copper.

Q. But, nevertheless, it shows that in these products which are covered, or which are insulated line wire [fol. 758] products that copper and aluminum were in there.

fighting, so far as Southwire is concerned?

A. I think these are misleading figures when you take Southwire against the rest of the industry.

Q. We are talking only about Southwire.

A. Aluminum wasn't fighting with copper. We were fight-

ing for our position in the aluminum industry.

Q. Well, unfortunately, I had to use dollars here because the figures, were given in pounds for copper and feet for aluminum, and I thought we would be going through too many mental gyrations to make a proper comparison.

Do you use any secondary metal in your fabrication of

aluminum wire and cable?

A. In electrical conductor we just use our own turnabout scrap.

Q. And you handle that yourself? You don't have to send it out for toll conversion?

A. No, we handle it ourselves.

Q. How many properzi machines do you have?

A. We own three.

Q. When you started, how many did you have when you started the rod business?

A. We had one.

[fol. 759] Q. And then you added a second?

A. We took out our original unit and sent it to Brazil and replaced it with a larger unit.

Q. And then did you add an additional one?

A. We have since purchased an additional one.

Q. Do you now operate two or three in the United States?

A. In the United States at the moment we are only operating one. The second unit has not yet—is not yet producing.

Q. But you are planning to put it into operation?

A. Yes.

Q. Do you—and I know you said this, doesn't General Cable make its own rod?

A. They have operated two Properzi units, one in Tampa I know is closed down. The other unit, I understand was also closed down recently.

The Court: Take a short recess.

The Clerk: Court will be in recess.

(Whereupon, at short recess was taken after which the trial was resumed.)

## [fol. 760] By Mr. Bergson:

Q I have just one or two more questions to ask you. Has South Wire ever exported EC rod?

A. I don't understand the question:

Q. Have you sold EC rod out of the country?

A. Oh, yes, we have. I thought you said exploited.

Q. When did you do that?

A. Well, we have done it for several years. The first time perhaps was as far back as 1955.

Q. And to what countries do you export it?

A. We have exported to Ireland, Mexico, India, Australia.

Q. And in 1955, when you exported, do you recall to what countries you exported then?

A. I believe to these same countries.

Q. Do you have any idea of the volume of the exports?

A. Well, our ability to export followed the position of our country and our company in the world marketplace. We were competitive during 1955 and 1956. In 1957, 1958 and 1959 we were not competitive in the world marketplace. More recently we have found the mechanics to again get [fol. 761] into some export business.

Q. 1955 and '56?

A. These years—it may be 1956 and '57, or 1954 and '55. It was several years ago.

Q. Were these the years in which there was an aluminum shortage in this country?

A. These were years—these were after war years when there could have been an aluminum shortage.

Q. So that you were exporting rod in a period when

there was a shortage?

A. And importing pig. We basically were in these cases and now in the export market, a converter. We would bring in and export either for drawback. Duty drawback.

. Q. When you say basically a converter you mean you

converted someone else's pig?

A. In some cases we have converted other people's pig.

Q. But in other cases you bought pig?

A. And re-exported it.

Q. And you did this in some instances during the period of shortage in this country?

A. Yes.

[fel. 762] Mr. Bergson: Thank you. No further questions. The Court: Anything else?

## Redirect examination

# By Mr. Melchior:

Q. Mr. Schoerner, I believe on cross-examination you said that in 1961 your profits improved, is that correct?

A. Over 1960, yes, there was an improvement.

Q. Could you tell me how much of an improvement on

a percentage basis perhaps?

A. Our 1960 profits were less than one per cent. 1961 profits will be—we actually haven't finished our final accounting—but somewhere in the neighborhood of one and a half to two percent.

Q. Is this a substantial increase, in your mind?

A. Well, in relation to our 1960, it would be a double percentage, but in relation to what we would like to be doing, or we did do in prior years, we would consider that it is a very nominal profit. We are happy with any profit.

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- Q. What were the profit percentages in years past? [fol. 763] A. I believe the first year in business the profit was four and a half percent. In 1956 it was perhaps close to four percent, thre and a half percent, something like that. Our poorest year, I believe, was in 1958 when our profits were, I believe the percentage was .38 percent.
- Q. I see. Now, I believe you testified that there was a recent drop in the price of aluminum pig.

A. Yes.

Q. How much of a drop was that?

A. Two cents a pound.

. Q. Do you know of your own knowledge who initiated that price drop?

A. Alcan, I believe, was the first, for foreign pig was

the cause of the price drop in this country.

Q. Directing your attention to these set-aside contracts which have been instrumental in your getting some aluminum pig during certain periods—

Mr. Bergson: I would like to have that question re-read if I may.

Q. I will strike the question and rephrase it. Directing your attention to these set-aside contracts that were discussed with you by Mr. Bergson on cross-examination, isn't it a fact that these set-asides are by government order? [fol. 764] A. I believe that is correct, yes.

Q. Now, directing your attention to these hot metal contracts which you spoke of on direct examination and cross-examination and you were asked whether you were aware of any company that was successful in arranging a hot metal contract with Alcoa, and I believe you mentioned an automobile company.

A. The automotive industry.

Q. Would it involve more than one purchaser?

A. I believe General Motors, Ford, Chrysler all have some type of hot metal arrangements with prime producers.

Q. Do you know whether any other companies outside of the automotive industry have been successful in entering into such a contract with Alcoa?

A. I do not know of any.

Q. Do you know that they have not been successful?

A. No, I do not.

Q. Directing your attention to the tabulation AR-11 for identification that Mr. Bergson asked you certain figures concerning—

A. Yes.

[fol. 765] Q. These are represented in dollars?

A. Yes.

Q. If they would have been represented in feet would

there have been an appreciable difference?

A. Yes, the ratio would have been in favor of aluminum, perhaps two and a half to one or something in that proportion.

Q. I see. No further questions.

#### Recross-examination.

## By Mr. Bergson:

Q. I think Mr. Melchior misconstrued my question. I asked whether volume had increased, not whether your sales had increased, but now that he brought up the question of profit—you said they were one percent, and then two percent, maybe two percent in 1961. It is one percent of what?

A. Sales.

Q. And not of investment?

A. .No.

Q. And two percent of the sales?

A. Yes.

Q. And not of invested capital,?

A. Yes.

[fol. 766] Mr. Bergson: That's all. Mr. Melchior: No further questions.

ROBERT CHARLES MOELLER, JR., called as witness on behalf of the Government, being first duly worn, testified as follows:

Direct Examination.

### By Mr. Mahaffie:

Q. What is your occupation?

. A. I am with the Collyer Insulated Wire Company, Pawtucket, Rhode Island. I am the president.

Q. You are the president of the Collyer Insulated Wire Company of Pawtucket, Rhode Island?

A. Yes.

Q. How long have you been president of the Collyer Insulated Wire Company?

A. Since the beginning of 1956.

Q. Would you state the approximate size of the Collyer Insulated Wire Company in terms of annual sales?

A. Between fifteen and twenty million dollars.

Q. Mr. Moeller, would you describe the product line as of today produced by the Collyer Insulated Wire Company? [fol. 767] A. About half of our product is what we call building wire which we make for stock in anticipation of business. The other half is principally custom made on order consisting of power cables, control cables, insulated asbestos, polyethelene, vinyl chloride, and in combination.

Q. About what percentage of your total business today is represented by aluminum conductor products?

A. Between one and two percent.

Q. Now, do you make a product known as shipboard cable?

A. Yes.

- Q. And do you make a product known as welding cable?

  A. Yes.
- Q. Do you make a product known as portable power cable?

A. Yes.

Q. Do you make control cable?

A. Yes.

Q. And do you make switchboard wire cable?

A. Yes.

Q. Do you make a product known as a tree wire? [fol. 768] A. Yes.

Q. Would you state what tree wire is, sir?

A. It can be a variety purpose of constructions. The customer in this particular case, the utility, has his own specification of the tree wire. We have been making as an aluminum conductor with rubber insulation for 5,000 volts and a special heavy duty grade covering, and a special hard finish of the grade of sudden abrasion by trees through which this wire passes.

Q. This wire is used by electric utilities?

A. Yes.

Q. And do you manufacture today a product known as line wire?

A. To a degree, yes.

Q. How about service drop cable?

A. Yes.

Q. And underground cable?

A. Yes.

Q. Now, the latter three products are sold to what class of customers? That is line wire, service drop cable and underground cable.

A. These are utility products. Take your last designa-[fol. 769] tion, underground cable, is a network cable, 600 volts, and network we think of as underground cable.

Q. That is a product used in cities for the distribution of electric energy?

A. Yes.

· Q. About what percentage of your total business is made up of these products which are sold principally to electrical utilities?

A. Possibly 15 percent.

Q. And with respect to your total production line which specific products do you manufacture with aluminum conductors?

A. You are speaking of all our products?

Q. Yes, your total products.

A. We make several items in aluminum. Building wire principally; the type known as THW; building wire, and we make some aluminum service entrance cable. These are the building wire items.

Q. Yes.

A. And we make aluminum tree wire and secondary aluminum line wire.

Q. Line wire. Now, is your line of building wire products substantially comprehensive? Is it what is usually called a full line?

[fol. 770] A. Yes.

Q. And in that—strike that. Could you give an estimate of the number of individual products that would be included in a full line of building wire! I don't mean by size, Mr. Moeller, I mean by types.

A. I would think seven or eight types would cover the building wire category.

Q. Is there a demand for building wires with aluminum conductors today?

A. We find a spotty demand. As far as we are concerned we find it in certain parts of the country only.

Q. And is that demand limited to type THW that you

describe?

- A. THW and RHW. But we are more concerned with THW.
- Q. Mr. Moeller, is there a demand for aluminum conductor shipboard cable?

A. Not that I know of, except that we do use aluminum incidentally an armor covering on shipboard cable, not as a conductor.

- Q. That aluminum serves what function in the cable? [fol. 771] A. Physical protection.
  - Q. It does not conduct electricity?

A. No.

Q. Why, if you know, sir, is there no demand for alumi-

num in shipboard cable?

A. I don't know except that shipboard cable is made to specifications. The Navy has its specifications. The Maritime Commission has its specification known as AIE No. 45, to which most commercial ship builders specify and buy cable. I have no knowledge as to why it does not include aluminum conductor.

Q. Is there any physical characteristic of aluminum, which would be relevant or which would be a disadvantage

in its use in shipboard cable?

A. Yes. I think aboard ship space is sometimes important, particularly to the Navy in their installation. The use of aluminum conductor would require larger sizes of conductor, which in turn would require more covering and a greater overall diameter of dable, which would become a problem space-wise in installation.

Q. If aluminum were used?

[fol. 772] A. If aluminum were used.

- Q. Mr. Moeller, have you noted a demand for aluminum welding cable?
- A. There has been an interest, but not an extraordinary demand from the people we do business with.

Q. You do produce aluminum welding cable?

- A. We experimented with it and found it unsatisfactory, so we do not make it.
  - Q. Parenthetically, what is welding cable?

A. Welding cable supplies the electric current from the —to the electrode holder which the welding operator uses, the hand device in welding.

Q. This is cable that trails behind the welder?

A. Yes.

Q. What are the reasons for your lack of success in using aluminum in welding cable?

A. The welding cable has to be flexible and in the copper construction flexibility is achieved by drawing copper to fine sizes and using a great many fine copper wires bunched together and covered. Aluminum wire cannot be drawn as far as we are concerned successfully to the same small sizes. Aluminum would tend perhaps to buckle, with [fol. 773] its less tensile strength to break or to bend. It is too brittle.

Q. Mr. Moeller, have you noted a demand for aluminum portable power cable?

A. No.

Q. What is portable power cable, sir?

A. This is a cable which has to be moved or reeled or unreeled in its normal use. Therefore it has to be flexible and has the same fine wire construction as copper.

Q. Would it be correct to say that the reason for aluminum's lack of welding cable would also apply to portable

power cable?

A. I think that is one reason. Secondly, substituting aluminum you would have to use a larger size conductor and therefore a greater amount of material, which would offset the economic advantages.

Q. Is there a demand for aluminum control cable?

A. Not that I know of. Not in our experience.

Q. Again let me ask you what is control cable?

A. Control cable generally is a multiple conductor cable possibly ranging from two conductors on up. I would say that an average range would be up to 45 conductors, or that sort of thing.

Q. What is it used for, Mr. Moeller?

[fol. 774] A. It is used to carry impulses which operate switches and devices which activate the flow of current.

Q. Would there be any control cable in this building?

• A. I am sure there is. The control cable in connection with the elevator.

Q. I see. Now, Mr. Moeller, why, if you know, is there

no demand for aluminum in control cables?

A. I think this is again a problem of space and conomics. To get the same current carrying capacity in aluminum where substituted for copper you have to have a larger size conductor, which means greater amounts of insulating material, greater diameters, and the additional cost of the covering offsets the saving in substituting the less expensive metal.

Q. I believe you stated there is in addition a size problem.

A. I think so, yes.

Q. All right now, what about switchboard cable? Is there a demand for aluminum in switchboard cable?

A. Not in our experience.

[fol. 775] Q. And why is there no such demand?

A. Well, I think switchboard wire, again, has to do with space and size of the conductors. Also I might say that these are not determinations that we make. Basically we respond to our customers' desires and to the customer's feelings that prevail.

Q. Yes, but you are aware generally of the reasons that

your customers do not go into this?

A. Yes.

Q. Mr. Moeller, in what form does Collyer buy copper?

A. In rods.

Q. And in what form does Collyer today buy aluminum?

A. In wire or strand, ready to insulate.

Q. Why does Collyer not buy aluminum rod?

A. Our wire drawing facilities are now operating at capacity on copper. It would be inconvenient for us to interrupt our copper wire drawing to introduce the drawing of aluminum.

Q. Would any equipment changes be necessary if Collyer

were to begin drawing aluminum?

A. Yes, we have to change the lubricants and the dies in [fol. 776] our wire drawing units particularly, and in our own operation we have no annealing oven, so that if we were to draw aluminum it would be hard drawn aluminum only. We couldn't anneal. We anneal our copper continuously in our wire drawing machine. We do not know how to do this drawing aluminum.

Q. Would you explain what annealing is, Mr. Moeller?

A. In drawing copper and aluminum, just the physical process, stretching it and pulling it down to size, it rearranges the molecules in a fashion which makes the conductor stiff and somewhat brittle in small sizes. Annealing rearranges the molecule structure so that flexibility is again introduced.

Q. Now, to draw aluminum, I believe you stated it would

Obe necessary that you install an annealing oven.

A. Yes.

Q. And as your machinery is presently set up you do not need an annealing oven?

A. That's right.

Q. Mr. Moeller, has there been any change in recent years in the amount of Collyer's total production of aluminum conductor products?

[fol. 777] A. I have some figures I can refer to, showing our use of aluminum conductor, back several years, if you will let me find them.

Q. Take your time, sir.

A. Would you like me to read these figures?

Q. Yes, sir, I think that would be the easiest way.

A. These are figures we reported to a department of the government on a form BDSAF-122. In 1955 we used 188,615 pounds. In 1956 we used 258,145 pounds.

Q. Mr. Moeller, these are pounds of aluminum?

A. Pounds of aluminum. It that what you asked?

Q. Yes. Go ahead.

A. In 1957 we used 35,559 pounds. In 1958 we used 3,119 pounds. In 1959 we used 20,588 pounds. In 1960 we used 56,463 pounds.

Q. In 1955 and '56 what aluminum conductor products was Collyer manufacturing which it does not manufacture today!

A. We were making ACSR conductor, and we also were making—we had some aluminum conductor, neoprene cov[fol. 778] ered line wire business which we do not now have.

Q. How about service drop cable?

A. We were not, as I recall, active in service drop cable. With some exceptions. We had some business on service drop cable at that time.

Q. So you did, in 1955 and 1956, manufacture ACSR,

aluminum line wire and some aluminum service drop cable?

A. Yes.

Q. And you manufacture none of these products today?

A. Well, we make no ACSR. We make a small amount only on special order only of aluminum neoprene covered line wire, and I believe at the present time we have no business on aluminum service drop cable.

Q. Why does Collyer no longer manufacture ACSR?

A. During those years 1955 and 1956 the competitive prices permitted us to buy the necessary steel wire and aluminum wire and assemble strand, or assemble the conductor and sell it at a profit, and I believe this has been proven to us that we can't do that now.

[fol. 779] Q. I see. Same reason applicable to your dropoff in the manufacture of these other aluminum products, service drop and line wire?

A. Yes.

Q. Mr. Moeller, what is the principal cost factor in your manufacturing operation today?

A. Cost of material.

Q. And what is the prime material that you use today?

A. Copper.

Q. Copper rod?

A. Yes, sir.

Q. Has there been any change in recent years in the profit of your operations?

A. Yes.

Q. Could you state what that change has been, in terms of actual net profit?

A. Yes:

Q. Would you do so, please, sir. Are you able to state as far back as 1956?

A. Yes. If it will be sufficient, I will round this off to the nearest thousand.

Q. Yes, sir.

[fol. 780] A. In 1956 we had a net profit after taxes of \$959,000. In 1957 we had a net profit after taxes of \$646,000. In 1958 we had net profit after taxes of \$337,000. In 1959 we had net profit after taxes of \$293,000. In 1960 we had net profit after taxes of \$154,000 and in 1961 we had a net profit after taxes—the estimated figure—it hasn't been.

prepared for our stockholders yet, but it will be less than \$154,000; possibly about \$100,000.

Q. During this period has there been any change in the prices of your finished product, as a general matter?

A. Yes.

Q. What has that change been?

A. It has been a decline due to competitive pressures.

Q. And has there been a corresponding change in the price of copper rod?

A. No.

Q. Has your drop in profit been related to the change in the spread between copper rod and the price of your finished product?

A. Yes.

Q. Now, Mr. Moeller, can you give an example [fol. 781] of the way in which this spread has changed since 1956? Any one of your products.

A. Well, I have some notes here on a typical item. It is typical because it is most commonly used in wiring buildings. Commercial or industrial or even—well, all non-residential buildings.

Q. What is the item?

A. This is known as size 12 solid copper type TW. This is an Underwriters Laboratories and National Electric Code designation, thermo-plastic insulated branch circuit wire product. In 1956 the competitive price which we sold this item, less the price we paid for copper rod, gave us an amount of approximately \$6.50 per thousand feet for what we contribute as insulators to the value of the product.

Q. This \$6.50 is the area within which you must conduct your operation and make a profit, if any?

A. Right. This provided us, or permitted us to supply labor and overhead and allow for cash discounts, to pay freight, sales commissions, and the whole cost of operating our business.

Q. I see.

A. In December—there has been no change in the physical nature of this product, but in December, [fol. 782] 1961 we sold this item at a competitive price, and our cost of copper rod left us \$3.18 to provide the same services. This is below our cost.

Q. So since 1956 the spread between the price of copper rod and the amount of money which you get for this one product has changed from \$6,50 to \$3.18 which figure is, I believe you stated, below your cost of manufacture?

A. Yes.

Q. Mr. Moeller, do all of your competitors operate within the same spread that Collyer operates within?

Mr. Bergson: I object, your Honor. I don't see how he could possibly know.

The Court: If he can answer that, he should.

Q. Well, I will try to rephrase it. Do you compete, Mr. Moeller, with manufacturers of copper rod—that is, do you compete in the sale of finished wire and cable products with manufacturers of copper rod?

A. Yes.

Q. Do these competitors, these manufacturers of copper rod, have any significant competitive advantage [fol. 783] that you don't have?

Mr. Bergson: Object, your Honor.

The Court: No, I will take it. I suppose what you mean is, they make their own rods, I suppose. Is that what you mean?

Mr. Mahaffie: Well, that and anything else that——
The Court: Overruled.

Q. Do you want the question back, Mr. Moeller?

A. Pardon?

Q. Do you want the question read back?

A. No. Shall I answer it?

Q. Yes.

A. Our competitors who are bigger and who have the advantages of rolling mills and perhaps advantages beyond that, of copper mines, have several advantages not specifically in relation to rolling mills, but their bigness seems to present several problems to us. One is in the way we must buy copper, at prices in effect at the time of shipment and competing perhaps with these larger producers who are willing to sell a finished product, the wire product, at firm prices for delivery at sometime [fol. 784] in the future, possibly as far as a year away, in connection with certain building construction products,

which buildings—where the buildings won't be ready for installation of wire for some period of time, nine months

or a year, or even longer.

This is a disadvantage to us because we feel that we don't know what our cost of copper will be at the time that we would have to manufacture and deliver the wire. Whereas that business, we will lose that business to these larger companies who are integrated or protected against that changing cost of copper.

Also we find in competing with larger companies we have the problem where certain opportunities are closed to us because of the reciprocity that larger companies can develop. A wire mill itself, with whom we are competing, may not have a reciprocal claim on a potential wire customer but in some way in other associated companies there is some sort of reciprocal claim at times that seems to close the door to us, to get them the business.

The Court: I don't understand any of that.

[fol. 785] Q. What do you mean by "reciprocal claim,"

Mr. Moeller, and how does this actually work?

A We have had two experiences. One where we actually had an order, a firm order in hand from an industrial manufacturer of steel products. The wire was about ten or twelve thousand dollars worth of control cable to be used in that steel manufacturer's plant. The steel manufacturer asked us if we would release him from the commitment of the order he had given us because one of our competitors through an associated company—

Mr. Bergson: I object, your Honor.

I think that he

The Court: I will let it in. Again it seems to me this is quite a ways away from the merger. Go ahead and finish it. I don't know what we are coming to.

Q. Go ahead, sir.

A. Our competitor, wire mill competitor had broughtpressure to bear on the customer through an associated company which was a producer in turn of the products of that steel manufacturer.

Q. I see. And that in general-

A. This is the illustration of reciprocity.

[fol. 786] Q. (Continuing) —that is in general what you mean by the term "reciprocity"?

A. Yes, sir.

Q. Is there anything else in the nature of practices engaged in by your larger and or your integrated competitors which are significant disadvantages to you in this field of business?

A. Well, I think their strength permits them to do business in building wire products on a consignment basis, which seems to close other opportunities to us where they offer to a distributor of electrical supplies to work in stock. By that I mean an assignment of wire products on consignment whereas as a smaller independent wire manufacturer we cannot afford to make the same offer, and it is difficult for us to get that distributor to buy our product, whereas he can have the stock without fears of inventory losses.

Mr. Mahaffie: No further questions.

Cross-examination.

# By Mr. Bergson:

Q. Mr. Moeller, just a couple of questions. I gather from your testimony that you were talking primarily about the copper industry?

[fol. 787] A. Yes, sir.

Q. Has the merger between Alcoa and Rome adversely affected you?

A. As far as I know, it hasn't.

Mr. Bergson: No further questions.

The Court: Just one question that I would like cleared up. We speak about this spread between the cost of the primary product, which in your case would be copper rod and the finished product. Now, over these years, from '55 to '56, I think we have been talking about, down to date, that spread does not remain constant? It hasn't remained constant? It has fluctuated; hasn't it?

The Witness: It has been fluctuating, but the overall

trend has been down.

The Court: Now for instance you take a copper rod-

I don't know how it is sold, by the foot; by the pound or by the ton or—how is it sold?

The Witness: By the pound.

The Court: All right. What was the price per pound, roughly, in '56 or whatever year you started?

[fol. 788] The Witness: Well, 1956 was an unusual year. That was a period of strikes, I believe, when copper went

That was a period of strikes, I believe, when copper went to forty odd cents per pound. 1955 I think perhaps the price of copper was thirty-five or thirty-two cents.

The Court: All right. Suppose we take the thirty-two cents. Now what was the price of the finished product

for the same year?

The Witness: I will refer to my note again. The particular item we are talking about, twelve solid TW in 1957, was sold at a net price. This is list, less certain trade discounts, in the first half of the year, at about twelve dollars fifty per thousand feet. And our cost of the copper rod was \$34.75 per hundred pounds. Or \$7.00 per thousand feet, approximately; leaving us a spread for insulating of \$5.50 per thousand feet.

The Court: Well, if I understand it right the price of the copper rod has increased, to you, over the period of

some years.

The Witness: In this illustration, no. Because in 1957 we were paying \$34.75 per hundred pounds for rods, and today we are paying thirty-three cents or thirty-three dollars per hundred pounds, or thirty-three cents per pound for the same rod.

The Court: Then the price has not increased? [fol. 789] The Witness: In this illustration the price to-day is slightly under that, in the first half of 1957. At the same time the finished wire product we have been talking about, wire sold for \$12.50 per thousand feet to our distributor customers, and today we are selling it for \$9.78 and actually there are competitive prices lower than that.

The Court: That is what I am getting at. Where the cut on the competitive price is on the sale of the completed product to a greater extent than on any increase in the primary product.

The Witness: The pressure has been on the price of the finished wire product.

The Court: Of the complete product.

The Witness: Yes.

The Court: And you have many competitors in the completed product; don't you?

The Witness: Yes.

The Court: And that large amount of competition—there is a great amount of competition in this country; isn't there?

The Witness: Year

The Court: And that seems to have forced the price of the completed goods down?

The Witness: Yes.

[fol. 790] The Court: While the price of the fundamental or primary metal, while it might have fluctuated some it hasn't fluctuated as much as the price of the completed product?

The Witness: That's right. The unfortunate position we find ourselves in is as insulators, is that these prices at which we are selling today, competitive prices is below ourseost.

The Court: Yes.

The Witness: And this is reflected in our earnings statements. For a limited time only can we stay in this kind of price fighting, whereas our competitors who are protected either through an integrated organization or diversified organization and do not have to report their earnings separately and individually for the knowledge of their stockholders, so these other competitors can afford to stay in this price fight for a longer period than we can because we have no one on whom to lean.

The Court: In other words it is the old rule of the stronger will survive?

The Witness: Yes.

The Court: But now when you are talking about the others, there is only about four or five integrated, or is [fol. 791] there that many, integrated, and of course we are talking about copper?

The Witness: Yes.

The Court: How many of them are there?

The Witness: In my comment I feel the same way about diversified companies as I do about integrated.

The Court: How many are there of those that you call integrated copper concerns, roughly?

The Witness: Perhaps four or five.

The Court: Four or five. Well, of course you have a great many more competitors in the finished field than those four or five integrated concerns?

The Witness: Many of these competitors have joined

groups of diversified companies.

The Court: Yes. But I would just like to take one thing at a time. The number of competitors that you have in the finished field probably runs into the hundreds or thousands?

The Witness: In the building wire we are talking about our principal competitors are no more than twenty.

The Court: I sec. Twenty. And of those twenty four are integrated; is that right; substantially? [fol. 792] The Witness: Yes.

The Court: So that you have—this sale is governed by the action of four integrated and sixteen non-integrated companies?

The Witness: Well, I would classify them differently. I would say four integrated companies and perhaps eight or so companies in diversified groups.

The Court: Of course, I understand no companies are necessarily the same; some have broader lines than others;

some more diversified than others.

The Witness: I don't mean diversified in the wire business. I mean diversified with companies in different lines of lossiness.

The Court: Well, all right. All right.

(Witness excused.)

The Court: Recess until tomorrow morning, ten o'clock.' The Clerk: Court's in recess until ten o'clock tomorrow.'

(Whereupon, at 5:10 p.m. o'clock an adjournment was taken to Wednesday, February 14, 1962, at ten o'clock a.m.)

[fols. 793-794]

[Title omitted]

# Transcript of hearing-February 14, 1962

[fol. 795] The Court: All right, gentlemen, I guess we can proceed in this case.

Mr. Wertheimer: Mr. Akin.

ROBERT MACOMBER AKIN, JR. called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Wertheimer:

Q. Will you state your full name and position?

A. Robert Macomber Akin. President of Hudson Wire Company, Ossining, New York.

Q. How long have you been president of Hudson Wire Company?

A. Since 1948.

Q. How long have you been with Hudson Wire Company?

A. Approximately 35 years.

Q. How old a corporation is Hudson Wire Company?

A. Hudson Wire was first formed as a partnership, Royle & Akin, in Newark, New Jersey, in 1902; moved to Ossining, New York in 1904; became the Hudson Wire Company in 1907.

Q. Who founded it?

A. My father and Joseph Royle.

Q. What products does Hudson manufacture?

[fol. 796] A. We have three-divisions. The products manufactured in two of the divisions are similar. Winsted, Connecticut makes magnet wire and high frequency conductors such as litz wire. The plant in Assopolis,

Michigan, makes a similar product. And the plant in Ossining, New York manufactures bare wire in fine sizes.

Q. What has been the general range of your sales in recent years?

A. Our sales run from, anywhere from six to ten million dollars a year for all three divisions.

Q. What is magnet wire?

A. Magnet wire is a film coated wire that is used to wind coils to produce a magnetic field, and where you are converting electrical energy into mechanical energy such as your doorbell, it contains a little magnet surrounded with magnetic wire. The coil on your car, the ignition coil is one, with two sizes of secondary wire, primary wire and secondary wire, and its primary use is for magnetic fields and this is used in high frequency conductors where it becomes a matter of current traveling on the outside of the wire. This is wire that is usually referred to as litz wire.

2. I show you a piece of wire. Would that be magnet [fol. 797] wire?

A. Yes, that is magnet wire covered with—well, this is from General Cable, and this is Enamel G. That would mean it is a solderable type wire.

Q. What is a solderable type wire?

A. This insulation is familiar to the layman. We put in the category of some of those self-polishing floor waxes. The formulation is different because of the heat that we use. But the sheets that we use in magnet wire is very similar to floor wax and car wax.

And the difference between the solderable type and the thormal type materials—this is a thermo-plastic—that means it can be deformed with heat, and by applying a soldering iron and temperature of 600 degrees Fahrenheit to this wire, we can solder, while in the other types it has to be scraped and cleaned before it is soldered. It has to be mechanically assembled.

Q. Now, is Hudson's range of magnet wire generally larger or smaller than this? First, what size—

A. Well, this would be the type of wire that would be on the border line with Hudson wire. Our wire is primarily fine.

Q. What size range?

[fol. 798] A. Well, we make wires in the form No. 18 B&S, Brown and Sharp gauge, to approximately 56 wire. 18 wire and 20 wire is in the neighborhood of 25 to 30-thousandths, to triple 05, which is 8/10 of a thousandth inch. In other words, this would mean a thousand wires laid side by side of the bare conductor before it is enameled would approximately take up the space of one inch.

Q. Then your wires are generally of the fine wire variety?

A. That's right.

Q. Smaller than this one?

A. Oh, much smaller.

Q. What size would you say this would be?

A. Well, they have it marked. 26.

Q. Then your wires would be much thinner?

A. Well, we do make that, but we would much rather make the fine wires.

Q. The coating we spoke of on the magnet wire makes it insulated?

A. Yes.

Q. I see. What metal do you use in making magnet-wire, Mr. Akin?

A. Primarily copper.

Q. Do you make it of aluminum?

[fol. 799] A. Yes, some.

Q. About how many pounds of aluminum and how many pounds of copper have you used in recent years for magnet wire?

A. Well, our copper and copper alloys, we will use roughly seven million pounds a year, and in the aluminum—well, let's look at the year 1959—we used roughly about 15,000 pounds altogether.

Q. Fifteen thousand pounds of aluminum, as opposed to seven million pounds of copper?

A. Yes.

Q. Why don't you make nore aluminum magnet wire?

A. Well, primarily, our customers do not ask for it in the fine wire. The market isn't there. And, secondly, we run into considerable difficulties in drawing extremely fine sizes of aluminum—and I will define "fine" as meaning from ten-thousandths of an inch and finer.

Q. What are the difficulties in making aluminum magnet wire?

A. Primarily, the nature of the metal. The lubricants required. They differ from copper. And the tensile strength of the metal itself is very low, and for that reason we have to change the practice of drawing from standard B&S sizes [fol. 800] to half sizes, maybe only a quarter of a size, In other words, we would use four times the number of dies to make the same reduction and the same increase in length.

Q. Are they the same dies?

A. Yes; the shapes are a little different. But they are diamond dies. Commercial diamonds with a tapered hole in them.

Q. Do these additional processes you describe result in any difference in the price of aluminum magnet wire, com-

pared with the price of copper magnet wire?

A. Oh, yes. You have to consider your labor and your materials and it makes it much more expensive. I could give you a rough example. Within the last two weeks we had an order for triple 68 aluminum—that is .8 of a thousandth. And it took one operator full time 144 hours to make a quarter of a pound of this material, while with copper he would use only one-tenth of his time and he could make that same quarter of a pound in four or five hours.

Q. Are there any differences in the type of winding one can get with the use of copper magnet wire and—

A. Oh, I would say yes, much smaller.

Q. Which?

A. The copper is. In component parts, the tendency in electronics is to go towards the smaller size, and as [fol. 801] a result the small transformers are wound with copper that would be very much larger made of aluminum to get the same conductance, same amount of current, through the wire.

Q. Do you mean by this that copper is more desirable?

A. In fine wire, yes.

Q. I see. Because of the space consideration?

A. Spade, primarily, and other technicalities that the engineers are acquainted with, that have to do with magnetic flux, and so on. I'm not acquainted with that.

Q. Is there any difference between the weight of copper magnet wire and the weight of aluminum magnet wire?

A. Well, the aluminum is about half the weight, with the same conductance.

Q. Is this important in the usage of magnet wire?

A. Well, I think that you should know that in large magnet wires it is a very different requirement than in fine wire.

Q. Directing your attention-

A. (Interrupting) In the fine wires I would say—would you kindly repeat your question referring to fine wire?

Q. You have already stated that aluminum magnet wire [fol. 802] in the fine sizes is lighter than copper, and I am asking you whether this is an important consideration in the usage of fine magnet wire?

A. Well, our customers have not required it as such in

fine sizes.

Q. I see. Do you anticipate that aluminum will be used in any greater proportion to copper in fine magnet wire in the future?

A. It entirely depends on the research group as to whether they can increase the conductivity of aluminum and improve the mechanical possibilities—improve it mechanically.

Q. Assuming the present conductivity, what would your answer be?

A. I cannot see it at this time, unless we are going to use it in outer space, where weight is a very important factor.

Q. What grade aluminum do you use for your magnet wire?

A. Electrical grade. EC grade.

Q. What is your raw material for copper magnet wire, Mr. Akin?

A. Copper and wire bars. And copper rods. We buy wire bars, and we also buy rods, and then when we have the copper wire bars, we have to be able to have them [fol. 803] converted into rods before we start in to draw.

Q. Is there any relationship between the price of your raw material, the copper wire bar or the copper rod, and the price of copper magnet wire?

A. Yes, when the copper base is increased, we increase the selling price of the magnet wire, and when it's reduced,

we reduce the price, and it's usually done all in the same day.

Q. You say that the increase or the decrease falls on the same day? What is the relationship between price change in the magnet wire and the price change of your raw material?

A. Well, the relationship is the same relationship as the base price. If the base price increased a cent a pound, we would increase magnet wire a cent a pound. If it decreases, it's inversely so.

Q. If the price of aluminum ingot or rod changes, do you change the price of your copper magnet wire?

A. No, sir.

The Court: That is the price of the aluminum.

Q. Yes. Who are your suppliers of copper wire bar?

A. Well, we buy copper wire bar from Kennecott Mining Company, Anaconda Mining Company, American Smelting and Refining Company, and at times we have bought [fol. 804] copper wire bar through our rod suppliers who do the conversion for us.

Q. Do you buy copper wire bar from Phelps Dodge?

A. No. We buy copper rods from Phelps Dodge.

Q. Who else supplies you with copper wire rod?

A. Well, we buy rods from our friends at Rome Cable. We buy rods from Anaconda Wire & Cable Company, and we buy rods from Phelps.

Q. Are any of these companies-

A. (Interrupting) And we buy rods from Kennecott, I might say. We have from time to time boughterods from Kennecott,

Q. Are any of the companies from whom you purchase your copper competitors of yours in the sale of magnet wire?

A. Oh, yes.

Q. Which ones?

A. Well, we have competitors, we are competitors of Phelps Dodge. We compete with the Anaconda Wire & Cable Co in magnet wire. We do not compete with Kennecott. Their finest size is just about our heaviest size.

Q. Has there been any change in the price of copper magnet wire in recent years, Mr. Akin? A. Yes, it fluctuated rather rapidly at times. A year [fol. 805] ago this past July it took a sudden drop of 12 per cent. Them here within the last few months there has been a tendency to try to regain some of that 12 per cent, which it seems to be going along with some success. I believe we have regained 5 per cent of it.

Q. Who instituted the 12 per cent drop that you speak of?

A. Well, it was instituted by a number of large corporations. I think the first one, according to the Wall Street Journal, was Phelps Dodge, the Inca Division of Phelps Dodge.

Mr. Bergson: If your Honor please—— The Court: Of course, it is badly hearsay.

Q. Do you know of your own knowledge who instituted the price decrease?

The Court: What knowledge you have was drawn from reading it and word of month; is that right?

The Witness: I read it, sir, and followed it and the other corporations did likewise.

Q. Then you know of your own knowledge that there was a 12 per cent drop?

A. Oh, yes, sir.

[fol. 806] Q. Did the price of copper rod or copper wire bar drop proportionately at that time?

A. No, sir. These are merely the finished prices that

were reduced.

Q. What happened to copper rod or copper wire bar at that time?

A. Qh, it might have dropped somewhat. But during that period, during that particular time, it did not drop.

Q. Then your price of your raw materials remained fairly constant?

A. Yes, that's right.

Q. The prices of your magnet wire or finished product dropped?

A. That's right.

Q. What has been the result of this on your profits, Mr. Akin?

A. Well, it has decreased our profits. We made all possible conservative methods to improve our machinery and output, but wages continued to go up, and it has cut our profits considerably.

. Q. What have been your profits at Hudson Wire in

recent years, by per cent?

A. What do you mean by "recent"?

Q. Let's start with 1955.

[fol. 807] A. In 1955, before taxes, the corporation made 7.4 per cent in net sales billed.

Q. In '56?

A. 9 per cent of net sales billed.

Q. '571

A. 6.3 per cent.

Q. 1958?

A. .6 per cent.

Q. 1959 ?

A. 3.5 per cent:

Q. Do you have figures from 1961?

A. That was a loss of 3.5 per cent.

Q. Did you know the Rome Cable Corporation prior to its acquisition, Mr. Akin?

A. Yes, sir.

Q. What kind of a company was it?

A. Well, they were very helpful to me personally and to our corporation. Their officers and their research people were very helpful. They bought copper for me at times, for the company, when there were times I had trouble in procuring it from other sources. They furnished us with special rolled rods so that we could draw fine wire, and I would say they have always been most helpful to us. And have not competed with us in any way.

[fol. 808] Q. Did you know the REA Magnet Wire prior to its acquisition?

A. Oh, yes, sir.

Q. What kind of a company was that?

A. They are a very high type corporation in that they are very aggressive in their selling. They have very high quality of magnet wire and I find they were real good competition.

Q. They were competitors of yours?

A. Oh, yes, sir. I would say they were our leading competitor.

Q. Mr. Akin, have you considered merger with an inte-

grated company in recent years?

A. Well, I might say we have been approached by a number of corporations. And we have considered it, but we have never got to the point where there was any financial arrangements whatever talked over.

Mr. Wertheimer: Thank you.

The Court: Cross.

Cross-examination.

By Mr. Bergyon:

- Q. Mr. Akin, you talked about the help that Rome Cable gave you in the past. Has that changed since the acquisition?
- A. I don't believe it has changed at all. I feel if I [fol. 809] called on Mr. Fraser tomorrow or Mr. Ralston or Mr. Schatzel, I would be as welcome as I have been in the past.
- Q. You mentioned REA Magnet wire as one of your competitors. Is Rea Magnet Wire an integrated copper company?
- A. I don't believe so, sir. I never heard that they even had a rolling mill.
  - Q. They are in about the same position that you are in?
  - A. Just precisely so. They were privately owned, also.
- Q. And they are no capitive sources of copper or copper rod?
  - A. No, sir, not that I could see.
- Q. Do you know whether they have any at this present time?
  - A. I wouldn't know, sir.
- Q. You talked about making a small amount of aluminum magnet wire; do you make that aluminum magnet wire on the same machines that you make the copper wire on?
  - A. Yes, sir. -
- Q. You use the machines interchangeably whenever you have an order for the particular product?
- A. We do, sir, and, of course, as it has been testified, [fol. 810] we use a different lubricant.

Q. Yes, but the part of changing the lubricant is not a major item?

A. It is interchangeable with a small change in the

shapes.

Q. You, of course, have been listening to the testimony here at least one day!

W Yes, I have.

Q. And you know what this case is about?

A. Yes.

Q. Has the acquisition by ALCOA of Rome Cable Company hurt you in your business in any way?

A. Not that I have observed.

Mr. Bergson: Thank you.

Mr. Wertheimer: No further questions.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Wertheimer: Mr. McNair.

LYLE WILLIAM McNair, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

#### By Mr. Wertheimer:

Q. Will you state your full name and position for us?

A. I am Lyle William McNair, President of Hazelwood [fol. 811] Engineering and Equipment Company, St. Louis, Missouri.

Q. Keep your voice up, Mr. McNair, please. How long have you been President of Hazelwood?

A. About four years.

Q. What were your activities prior to that time?

A. I was Chief Engineer of Dow Chemical, Madison Division, for about nine years.

Q. Are you an engineer?

A. Yes, sir. Graduate engineer from Iowa State College, Ames, Iowa.

Q. When was Handwood Engineering & Equipment Company founded?

A. Approximately 13 years ago.

Q. By whom? .

- A. We had three stockholders, no, four stockholders. My wife—do you want the names of the stockholders?
  - Q. Well, were you a stockholder?

A. Yes, sir, I am a stockholder.

- Q. I see. What does Hazelwood manufacture, Mr. Mc-Nair!
- A. Well, for the past five years we have had an extrusion operation, aluminum extrusion operation.

Q. Do you extrude anything but aluminum?

A. Outside of some experimental work we extrude nothing but aluminum.

[fol. 812] Q. I see. What types of products do you produce by aluminum extrusion?

A. We make the usual run of architectural shapes for doors, windows, curtain wall sections; we make sections for boats, trailers. We made rod, and, of course, we made conduit, couplings, elbows; that go into the electrical field; and clamps. We make over 800 different shapes.

Q. I see. Do you make aluminum EMT-electrical me-

tallic tubing?

A. No, I considered getting into that business, but after looking into it quite thoroughly we could not see any economic reason for getting into that field.

Q. Therefore, when you refer to aluminum conduit you

are referring to aluminum rigid conduit?

- A. Aluminum rigid conduit. I might say we were the first independent producer of aluminum rigid conduit, to my knowledge. We were second in the industry only to ALCOA. In time, not in size.
- Q. Is the manufacture of aluminum rigid conduit a substantial portion of Hazelwood's business?

A. Well, it is approximately 25 per cent.

Q. I see. What was the general range of Hazelwood's 1961 sales!

A. About two and three-quarter million dollars. We [fol. 813] pushed over about seven million five hundred thousand pounds of aluminum.

Q. In that year?

A. In that year.

Q. How is aluminum rigid conduit made? What is your

raw material? Let's start that way.

A. We start with the extrusion billet, which is a circular billet, 6 inches in diameter, 24 inches long. I might say in the extrusion industry there are all sizes and types of presses, 500 ton and below in size, all the way up to 14,000 tons in size. Billet size range from 2 inches in diameter or less up to 32 inches in diameter, 6 foot long.

Q. Yes.

A. So the industry has all sizes of presses and between that. Our press is not the smallest and it is a long way from being the largest. It is rated at 1250 ton and takes a 6-inch billet, the maximum 25 inches long. Our standard billet is 24 inches.

Q. You start with a 6-inch billet and what do you do

with it?

A. We heat the billet up to approximately a thousand degrees. Our billet heater is electrical, by electric conduction. The extrusion press, in simple terms, is a horizontal long truck hydraulic press. The main components [fol. 814] of the press are a die assembly, a container—the container, by the way, is a heavy forgea, electrical heat. It contains a billet. You put the billet in this container. It contains the billet while you are applying pressure. The container is sealed against the die on one side. The billet is inside the container. You come forward with the ram of the press and build up pressure which displaces the metal and the billet extrudes it through the die and it runs down the table.

Q. This is the extrusion process?.

A. This is the extrusion process in very simple explanation. Of course, the press has pumps and control valves, and it is all automatically controlled and the presses are built for high speed operation, high production.

[fol. 815] Q. Let's see if I can simplify it even further. You put the billet into a press, pressure is applied from one side, forcing the metal, the aluminum, through a die into the desired shape.

A. Right. I might say that shapes, as far as we are concerned, are basically two classes. What you call the solid shape and the hollow shape. The solid shape, of

course, is the shape that doesn't have a hole through it, like angles, channels, window sash. Those dies are flat dies, fairly simple dies, and the average cost of a die, for example, is around \$150. Then you have the hollow type used—

Q. Let me stop you right there. Aluminum rigid conduit

is made from a hollow die?

A. Yes. A hollow die. Then tubing can be made with a bridge or port hole type die, or by mandril extrusion. OI use the bridge type die and port hole type die. Those dies for conduit run about a thousand dollars apiece up to twelve hundred dollars apiece for each size of conduit.

Q. When the billet comes out of the extruding press for

conduit, what is its form?

A. Well, as the billet is being extruded through the [fol. 816] die we have a graphite line run on a table a hundred feet long; the pipe runs down this table, runs out hot, about 975 degrees,

Q. What do you do with it next?

A. It is then cooled. We have air fans, blowers, for cooling it, and it goes to a walking beam table that is a hundred feet long and ten feet wide and transferred across this cooling bed to a stretcher. By the time it reaches the stretcher it is cooled down to room temperature and then we take it through the stretcher, clamp both ends and pull it one percent. That gets it straight. It is then transferred out of the stretcher to a saw table and there it is passed through the saw and cut in the case of conduit to the standard 10 foot lengths and then it is ready for the threading machines.

Q. The threading machines-what do they do?

A. We thread both ends of the pipe and chamfer each end. And then we apply a coupling and a plastic end cap on the opposite end for color coding and we lubricate our pipe with a wax lubricant and apply underwriters' label. All conduit carries the underwriters' label.

[fol. 817] Q. Then the equipment you need for the manufacture of rigid conduit is an extrusion press, stretcher, threading machines, and accessory equipment as you indicated. About how much of an investment does this entail?

A. Well, our press and auxiliaries to the press is somewhere around \$300,000 installed. Our threading equipment

—we have real modern threading equipment—in fact, we have the same type equipment Alcoa has. Landis Hydramatic. They are the only company that makes such machines. It is fed automatically to the threader. Both ends are threaded at the same time, chamfered and kicked out. That equipment will takes sizes from a half inch through two inches, and costs approximately \$30,000. The larger sizes we again use the Landis machine and it is one end at a time on the larger sizes, and that is about \$20,000.

Our extrusion dies for our coupling operation is somewhere in the neighborhood of \$25,000. Our coupling machines for tapping coupling and chamfering and so on run another \$25,000, so in a sense we are talking about at least

\$100,000 or more for the conduit operation.

[fol. 818] Q. \$100,000?

A. Yes, or more. We also have bending equipment for bending the elbows.

Q. Oh, I see. \$100,000 in addition to the press.

A. Yes, in addition to the press.

Q. I see. What is conduit used for, Mr. McNair?

A. Conduit is used for raceways, for electrical wiring—
it may be used in concrete or underground, overhead;
usually it is used in connecting a motor or a piece of equipment, for example, over to a control box or switch box.

It may be used for feeder line of bringing power from a
sub-station into a building, and distribution of that power
through outlets like you may have in this building, and so
on. Control cables. Remote control devices. It primarily
is necessary for mechanical protection of the wiring, and
neat appearance; looks good. And of course all of it has
to meet the various codes and underwriters specs that are
prevalent in all areas with respect to rigid conduit. You
have to use. Not in every instance, but in most commercial
and industrial installations I would say.

[fol. 819] Q. Does aluminum rigid conduit differ from

steel conduit?

A. What do you mean by that?

Q. Are there any characteristics of one that are not characteristics of the other?

A. Well, they are different metals, of course. The end use is the same. In other words, whether you use aluminum

or steel, it still does the same job. We think, of course, that aluminum has advantages over steel.

Q. What would these be?

A. Well, the weight saving. Approximately one-third the weight of steel. Labor costs are less in putting it up. It is non-corrosive, or at least is more non-corrosive than steel. It has the aluminum finish, of course. Nice appearance. Non-magnetic, which from the electrician's point of view or electrical designer's point of view is an advantage because of the way he can arrange his electrical conductors in aluminum where he can't do it in steel. It bends readily in the field. That is a major part of the installation of conduit, especially on the bigger sizes. Of course, the material in itself is softer. We have a couple of minor prob[fol. 820] lems with it, but frankly wire pulling has been brought up by the steel people as not so good in aluminum, but frankly that's the only thing they have got to talk about, so it doesn't amount to much in my opinion.

Q. Are there any differences in the way aluminum conduit and steel conduit are sold?

- A. Well, it is sold through essentially the same people. By that I mean it is marketed through distributors as a rule. There are exceptions to that, like on government projects and so on where they are bid jobs—well, even there usually the manufacturer will go through a distributor.
  - Q. Let me ask you this. Is steel conduit consigned?

A. No.

Q. Is aluminum conduit?

A. Yes. Aluminum conduit is consigned by the prime producers.

Q. Who are the prime producers?

A. Alcoa, Kaiser, Reynolds and Harvey, I believe. I am not sure of their consigning.

Q. What type of a pricing system is used for rigid alumi-[fol. 821] num conduit? How are the price sheets set up?

A. Well, the price of the product has been fluctuating quite erratically over the past three years. Various price sheets have been put out not only by ourselves but the prime producers and other distributors, and it seems that the change is always downward. Roughly I would say that since 1958 the price has changed at least six or eight times,

and I don't believe anyone knows today what the price, selling price of the product is. By that I mean I don't think they have a price sheet that means a lot to the salesman. I think they use it as a base, and work from the base, and what that difference is between the base and the sale I don't know,

### Q. You say the price

The Court: Let me interrupt and see if I understand. So that right now in this finished product each company as far as you can see fixes their own price?

The Witness: Well, that is essentially so, yes.

The Court: Well, doesn't that make for freer competi-

The Witness: Well, yes, it does. However, I think [fol. 822] there is a difference probably between competition and cut-throat competition.

The Court: Oh, Yes.

The Witness: And again I am not the one to judge whether it is cut-throat in the conduit business or not, but again it is getting awful close to where it is almost impossible to make a profit on it.

The Court: In other words, competition is so close now

that your margin of profit is almost-

The Witness: That's right, your Honor.

The Court: When you say there appears to be no regular price list or any firm price list, that means that one company may well undersell another?

The Witness: That's correct.

The Court: Doesn't that tend to give the purchasing public the advantage of competition between these com-

panies who make the finished product?

The Witness: Yes, it does, and I think too that the price [fol. 823] cutting like that, people buy it more readily. It is a new product. You have to do certain things to introduce a new product. I don't agree with the primary producers that price is the only thing—we have got so many advantages we don't have to sell price all the time. However, price cutting has introduced the product and moved it faster, but again it gets back to the point I said before as to how far can you go in your price structure and still survive, and if you go beyond that, it is no good for anybody in my opinion.



The Court: I agree. I am not a businessman and all I can do is kind of watch these things as they go along. Certainly business, to exist, must make a profit. I don't care whether it is primary, secondary or whatever it is. And this close competition tends to make each of these ultimate manufacturers pare their own costs and increase their own efficiency.

The Witness: Right.

The Court: So that a close competition of this kind [fol. 824] tends to create efficiency in manufacturing, does it not?

The Witness: Yes, sir. Usually the small fellow is handicapped a little bit there because of buying the most modern type of equipment. This equipment is expensive, and a lot of times he gets in trouble there, but usually overhead and other things are less and it tends to compensate some, too. There is give and take both ways. There should be room for both, but again—well, I guess that's why we are talking about it.

The Court: I just wanted to see if my understanding—just looking at it broadly, is the same as yours.

We have a plant at GE here in this city. They are constantly improving methods, or claim they are. I am not mechanic enough to say. And so as to cut their costs of taking base product and turning it into a finished distributable product. They are constantly attempting to cut down that cost, so as to keep that margin of profit, be[fol. 825] cause if they don't their margin of profit will disappear. It is a common thing that happens to all business.

The Witness: Yes, it is sort of a profitless prosperity in my business. We have to work three shifts to make a profit. It takes us two shifts with our operation to break even. Our profit, if we make any, is on the third shift.

The Court: All right.

### By Mr. Wertheimer:

Q. Mr. McNair, I wonder if you could compare the highly competitive state of aluminum conduit with the erratic fluctuating prices that we spoke of and the low profit margins with your prices for aluminum billet.

Mr. Bergson: I find that a very involved question, and I think counsel is testifying.

Mr. Wertheimer: I will rephrase it, your Honor.

The Court: I think it is a little involved. I am not certain quite what you are getting at myself.

[fol. 826] Q. Compare the price structure of aluminum conduit—prices at which you have to sell the product—with the prices of aluminum billet—the prices you have

A. You mean present day prices?

to pay for your raw material.

- Q. And over the last two or three years.
- A. You want me to answer that, your Honor?

The Court: Yes.

- A. Well, billet price is approximately 25 cents a pound, 24, 26, somewhere. The average selling price of our conduit—again we get into zone pricing, freight, all of those things, and I have to estimate that somewhere around 37 cents a pound.
  - Q. This is the present day?

    A. This is the present day.

Q. What was it a couple years ago? Was there any greater or smaller difference—margin?

A. If you would like to take the time, I will give you

the prices of the billet that I used since 1958.

Q. Fine.

A. In April, 1958, the price was 26.5 cents. In August, 1958, it was 27.2 cents. In July, 1959, the freight allowance [fol, 827] was discontinued. In December, 1959 it was 28 cents. In August, 1960, it was 28.3 cents. In June '61 it was 27.2 cents. In September, 1961 it was 25.5. In December, 1961, it was 25.3. However, there is a scrap allowance set up into some of these prices which affected it a cent one way or the other, but essentially that has been the pattern of billet prices, which is about the same, maybe a cent a pound more than it was when I first started in the conduit business.

Q. Will you characterize these prices as fairly steady? What was the greatest differential there? It went up to 28?

A. It was I think 28.3 to its present price which is the lowest today—around 25.3.

Q. Three or three and a half cent difference?

A. That is with the scrap allowance not in the picture.

Q. How widely have the prices of aluminum conduit

fluctuated during the same period?

A. Of course conduit, we being the first independent in the business, we priced our product about ten percent higher than steel, and had considerable success in selling it, and as others got into the business the price then started [fol. 828] to drop, and it is selling today at the lowest price I have ever sold conduit. And it is approximately 25 percent less than what I started selling it at in 1958.

Q. So there has been a 25 percent difference in the price of conduit, and a smaller difference in the price of your

aluminum billet?

A. Yes.

Q. You paid book or list price for aluminum billet?

A. Yes, sir.

Q. And you do sell your conduit at book or list price?

A. No, this extrusion business is quite unusual in that respect. The raw material is pretty firm price-wise, termwise and so on, but once you extrude this through a press the price varies all over the map. It is not stable as to price, terms of sale and so on. I guess the reason for that is that there are more producers, independent producers and others that have presses, and I suppose—I don't know all the reasons—I just know that they exist.

The Court: The demand for your type of finished product [fol. 829] has increased greatly in the last five or ten years?

The Witness: Yes.

The Court: So as the demand increased, why I assume more people go into this extruding process.

The Witness: That's correct.

The Court: From my own observation, we see now these aluminum doors commonly on practically all the new houses anyway.

The Witness: Yes, sir.

The Court: Where five or ten years ago we didn't see them.

The Witness: All wood.

The Court: Yes. So that really what has happened as far as your type of business is concerned is an increased

demand for your product, coupled with an increased num-

ber of manufacturers in that type of business.

The Witness: That's correct. You see, the extrusion process is such that for a relatively small investment you can get into the extrusion business. Of course, I don't mean [fol. 830] to say that a half million dollars is small, it is not small to me, but compared to making the same product out of steel, the cost is way beyond. So therefore you have opened up the extrusion market to more independents. The smaller fellow that wants to get in and extrude aluminum.

The Court: There is a big difference in the quality of the finished product in this extrusion process, isn't there?

The Witness: Yes, sir.

The Court: In other words, there are cheap grades and

reasonably good grades.

The Witness: Usually in thickness. Nobody wants any metal in their sections anymore. They pay for it by the pound—they want it as thin as possible—and when you put in a window or a door—

The Court: Some of them, when the wind slams the door

once, that's the end of the door.

The Witness: That's right. We like heavy sections. The thin ones are hard to process.

### [fol. 831] By Mr. Wertheimer:

Q. What type of pipe is used for the manufacture of aluminum rigid condit?

A. The dimensions are by Schedule 40. Standard size as

to o.d., i.d. and wall thickness.

Q. Is Schedule 40 pipe used for any purpose other than the manufacture of aluminum rigid conduit?

A. Oh, yes, we sell the same pipe for fence post, sign post and process piping, some process piping, like oillines.

Q. Is the price of Schedule 40 pipe when used for conduit different from the price of Schedule 40 pipe when used

for other end products?

A. As a rule, yes. Our conduit, of course, is much cheaper because of commodity pricing setup, I suppose you would call it, at least it is in more demand, there is more volume there so the price is down. As I said before, conduit sells for somewhere around 37 or 38 cents a pound, threaded both ends, coupled end cap and so on. I can sell

that same pipe for fence post and get 43 cents a pound and don't have to do anything to it. Why they don't go out and buy conduit for fence post I don't know. That's what they should do. Some process piping where you sell [fol. 832] 21 foot lengths, we get as much as 60 cents a pound for it.

Q. So the difference in the price of the pipe is determined by its end use?

A. That seems to be the pattern?

Q. Are there any advantages which the integrated producers have over you in the sale of aluminum rigid conduit?

Mr. Bergson: I think that calls for a conclusion, your Honor.

The Court: Yes, it does, but I will take his idea of it. Whether the integrated man has the advantage over the non-integrated.

The Witness: Well, the integrated companies, of course, have to be much larger. They go all the way back to the bauxite.

[fol. 833] The Court: Their investment is very much more.

The Witness: Their investment is higher, more people, and overhead, and so on. However, on the other side they have the profit to work with and I think there is a profit—I am not sure, though—from the bauxite up, ingot or the billet. We have to start with the billet. And get our profit through the extrusion process, and naturally paying 25 cents a pound for your raw material and selling at 37, there is not too much of a margin therefore to work on because there is a lot of scrapping, your overhead, and so on. But from their bauxite through to their 25 cents a pound, they should have approximately the same margin to work. So, they, in a sense, are selling pounds of alumina and getting the profit all the way through; whereas we are only selling aluminum billet.

Of course, I recognize that they have their headaches, too.

By Mr. Wertheimer:

- Q. Do you consign your aluminum conduit?
- A. No, sir, I can't afford to.

[fol. 834] Q. And I believe you said before that the primary producers do consign?

A. Yes, to my knowledge, all of them do. That is consign

conduit.

Q. What sort of credit terms do the prime producers offer?

Mr. Bergson: If you know.

A. Well, may I answer that in a general way, your Honor, or do I have to—

The Court: Well, if you know, it is all right. If you are

just guessing, well, it doesn't help me much.

The Witness: It varies so much that I can't pinpoint it. Again it gets into the area of what the traffic will bear. All I can say it is more flexible on the finished product side than the raw material side.

Q. Let me see if I understand it, Mr. McNair. Credit is generally very liberal on the sale of aluminum conduit by integrated producers.

The Court: Credit by whom?

Mr. Wertheimer: The integrated producers.

The Court: In the first place, I think this man ought to tell whether or not he knows of the credit arrangements [fol. 835] of the integrated producers. Because it is available. And if we are just taking a guess, I am sure the witness doesn't want to guess, because it doesn't help me a bit if he guesses. Because, I suppose it is available.

Q. Mr. McNair, are you familiar with the credit policies of the integrated companies in their sales of conduit, aluminum rigid conduit to distributors?

A. I can tell you how a consignment works which involves

credit, but again I am not-

Q. I think we have enough on consignment. Let's just turn to credit terms, the days of latitude you have before your obligation is due. You are familiar with electrical distributors; are you?

A. Yes.

Q. Are you familiar from your own knowledge with the credit terms the integrated companies make available to those distributors on the sale of aluminum rigid conduit?

A. In a general way.

Q. Are you familiar with the credit terms of those same integrated producers in the sale of aluminum billet or raw material to you?

A. Oh, yes, I am very familiar with that.

Q. Is there any difference in the two?

[fol. 836] The Court: Well, let him give what they are, and I will determine whether there are any differences.

Q. All right. Would you state what they are?

A. Well-

The Court: What is your credit term for billet? That is

what you want.

The Witness: The credit terms for billet, the book is net 30 days. Freight is paid to your plant. I can't pick it up in my own trucks. They have to deliver it. Now, I am not saying that some of the terms are not deviated from the 30 days. They do. But the book says 30 days. Of course, I suppose the book on extruded products on conduit, well, they have 2 per cent cash prox. period. Everybody gives it. I never have been able to collect that 2 per cent cash. They will take long on credit for 30 days and there is nothing that you can do about it. You can sue them and that takes three years.

The Court: And by the time you get through with your lawyer there is nothing.

The Witness: That's right. And the consignment end of it, just putting the stock in a distributor's warehouse [fol., 837] and having it available to him, and he doesn't have to pay for it until he sells it, and what terms he gets beyond the time he sells it, whether it is 30 days, or what, I think it would depend on the distributor. At least there is a lot of flexibility there with consignment on the consignment end of it. And, of course, by consignment they get a lot of the over-the-counter business. I can't get any of that business because the freight just to send a few hundred feet of different sizes 100 miles or so away—in my area we would come out all right, but at long range, unless I did consign, I can't get that over-the-counter business.

Q. Mr. McNair, what is package selling?

A. As I understand it, in our area it is sort of a name

given to where a distributor goes in and bids a job and sells many commodities used on that job, such as conduit, couplings, elbows, switchboxes, lighting fixtures, panel boards, footing wire, cables and so on. Of course, usually he will bid to get the whole type of equipment. He may give you a break on the price of some items. The main thing he is after is the total, to make a profit on the total of these items, and, of course, depending on the size of the [fol. 838] distributor, whoever is selling the distributor, he can be more flexible in his pricing if he has more products to work with.

Q. How does this practice affect you?

A. Well, of course, since we, in most cases, would only make conduit, couplings and elbows, in such cases we wouldn't have any other products to lean on, so to speak, to come up with a profit, so we make it on these items. I suppose if you are larger and have other products you can be more competitive. Simply because you have more items and more dollars involved and more pounds involved.

Q. What is reciprocity in your business, Mr. McNair? A. That means you scratch my back, I scratch yours. Q. How does it work in regard to the sale of conduit?

A. Well, I think it comes into play—I think I sell yours and you sell other products that I make. It is present all the time.

Q. How does it affect you!

The Court: However, he hasn't told us. You have what we call reciprocity in your business, what is reciprocity. It is a little indefinite to me.

The Witness: Yes, sir. It is mainly if you have got something to buy and to sell and you buy and sell between two [fol. 839] individuals, there is an advantage in doing it that way. There is nothing wrong with that type of selling in my book. I think that essentially—

The Court: In other words, the seller takes care of as

good customer.

The Witness: Well, yes.

The Court: And a good customer feels that he can go

back to the seller if he reeds it.

The Witness: Yes, that is one way of it. Or maybe a good customer has a way of helping you get some business. That particular fellow may make a product that you can

use in servicing that business. Well, you would buy it from him because he helped you get the job.

The Court: Oh, sure.

Mr. Wertheimer: That is all, Mr. McNair.

#### Cross-examination

### By Mr. Bergson:

Q. Mr. McNair, we were just talking about these distributor packages. Do you sell through distributors?

A. Yes.

Q. Now, do your distributors handle other items of equipment?

[fol. 840] A. Oh, yes.

Do you mean sell other than conduit?

Q. Other than conduit!

A. Yes.

Q. They sell wire cable?

A. Yes.

Q. Switch boxes, fuses?

A. Yes.

Q. So forth and so on?

A. Oh, yes.

Q. So a distributor handling your conduit could put together the same sort of package that a distributor handling the prime producer's conduit could put together?

A. Well, he could, but if I was selling him two products, more products in that package, he possibly might put together a different package than he could have if he was buying just part from me and part from another.

Q. Are you talking about a distributor as an independent business man? He is not your agent?

A. No.

Q. He buys conduit from you?

A. Yes.

Q. He buys wire and cable from somebody else? [fol. 841] A, Yes.

Q. He buys switch boxes and fuses from somebody else, and he is interested in making a profit?

A. Yes.

Q. And he is interested in making the same overall profit,

adding up all the other items that the other distributor is interested in making?

A. Yes.

Q. And if he puts together a package and your conduit is in that package, and his overall profit by linking up things together gets him the ob, you sell your conduit he gets, he gets the job, and it is no different from anybody

else; is that right?

A. Well, not exactly. Maybe he-let's say he has two items from one that he is buying from. He has conduit and light fixtures. From that fellow that handles both of those, he can say to that fellow, "O.K., I will buy the lighting fixture at your price, but on conduit I want your cost-I will buy the lighting fixture at your book price, but on conduit I want your cost, and I will make it up on the lighting fixtures." Then he gets that price. Then he comes in and I only make conduit and he says, "Well, you are high. Here is the competition." That is the difference. [fol. 842] Q. But take the situation where the distributor has bought from you.

A. Yes.

Q. A stock of conduit. He owns the conduit; doesn't he?

A. Well, yes.

Q. And he owns it for re-sale?

A. Well, he usually doesn't buy it from me in my case. unless it is for a job. He has it sold when he buys it from me.

Q. You don't have any distributors?

- A. Not stocking them, no. Maybe I misled you before. We sell to distributors but don't sell them stock. Because they want it consigned and I can't do it.
- Q. But in any event the distributor to whom you sell can put together and is in a position to put together the same sort of package that the other distributors are in a position to put together?

A. Oh, yes.

Q. Now, you said, I think, that the Hazelwood Company has been in business for 13 years; founded 13 years ago?

A. Incorporated, ves.

Q. Were you one of the original incorporators?

A. Yes. Let's put it a different way. I believe my wife [fol. 843] was. My wife was a graduate engineer and she was on the original papers, and I was working elsewhere. I had to make a living for somebody else.

Q. What did Hazelwood Engineering do before it went

into the conduit business?

A. We ran sheet metal steel form in the electrical trade of making pull boxes and panel boards and control desk, and so on. It had an electrical background.

Q. When did you buy your extruder?

A. About five years ago. In 1957, I believe.

· Q. And you went into the conduit business when?

A. In '58.

Q. In '58, and between the time you went into the conduit business and the time you bought the extruder you were

in the business of other extruded shapes?

- A. Yes: We were unfortunate in our business so that we never got any of the gravy business in the extrusion. The bettom dropped out of things as you will recall in '57. So we went in at the worse time, but we still, we had a little struggle in '57 trying to get new products, trying to get on our feet in the extrusion business.
- Q. But you were not in primarily, when you bought your extrusion press?

[fol. 844] A. Yes.

Q. You were thinking in terms of other products than conduit?

A. Yes.

Q. And you would have made an investment in the extrusion press irrespective of whether or not you ever decided to go into conduit?

A. I think so.

Q. So that your expense in going into conduit were these additional expenses of adding the threading machine and the capping device, and the other items that you mentioned?

A. Yes.

Q. You have a pretty efficient threading machine, don't you?

A. I think so.

Q. And a pretty high-priced one?

A. I know so.

Q. There are threading machines that can be obtained for a lot less than the amount that you mentioned?

A. Yes, sir, but you can't get the production.

Q. I understand that. Now, when you first went into the conduit business in 1958 you said you and ALCOA were the only two aluminum conduit—

A. (Interrupting) To my knowledge. [fol. 845] Q. (Continuing) —makers?

A. I may be wrong, but, to my knowledge, that is so. Q. Now, what was your principal competition in 1958?

A. Well, I didn't have competition in the sense that we have it today. The problem then was the introduction of a new product and to get someone that would accent its advantages and so on.

Q. You were competing with steel conduit?

A. I was competing with steel, yes, because this business

has to come from what steel was getting.

Q. That's right, but the aluminum conduit business to the extent that aluminum has entered the conduit market, it has taken a certain proportion of the steel conduit market?

A. That's right.

Q. And the aluminum conduit doesn't perform any func-

tion that is not performed by steel conduit, does it?

A. Well, there is some areas where we can argue about it. I think in a couple of areas there is a couple of functions that you can do with aluminum that you can't do with steel. However, basically it is so. It is still a raceway and the contained wires and so on.

Q. And these areas would represent what percentage of the market which you have?

[fol. 846] A. I am thinking of the magnetic features and it would be maybe 5 per cent.

Q. A very small percentage of the market. Now, let me ask you this, you have given a beautiful explanation as to how aluminum rigid conduit is made. Is there any other

way of making aluminum rigid conduit?

A. Well, you can use the mandril type, as I mentioned. The Yoda press rolled sheet. Pipe could be made that way. However, I doubt if the underwriters would approve it because of the weld. But there are other ways of making pipe and you get into the technical end of it whether it is acceptable.

Q. And this welded sheet wouldn't be a very good product?

A. Well, I won't say that it wouldn't work, but I don't believe you would sell any.

Q. I suppose in any business man's book, that means

it wouldn't work?

A. Well, this is welded sheet and because of the ridges is objectionable and the thread is different and the underwriters wouldn't buy it.

Q. Now, when you first went into the conduit business, the aluminum conduit business, how did your selling price

compare with ALCOA's selling price?

- [fol. 847] A. I was lower than your's. You sold aluminum conduit at that time pretty much as a premium product. It was used primarily for acid conditions in the soil, where the metal would lend itself and had to be used either that wa yor get a galvanized pipe with tape around it and so. As I recall the price, the aluminum conduit was somewhere around 40 per cent higher than steel conduit. That was the market at the time I got into it.
- Q. So at the time you went into it, when you and ALCOA were the only producers of aluminum conduit?

A. Yes. sir.

Q. And the millstone in this squeeze that was mentioned during your direct testimony was set by yourself?

A. Yes.

Q. And not by ALCOA?

A. Yes, that is correct.

Q. And since then it has been set by competition?

A. Other than you, yes. Pretty much. I would like to comment, if you don't mind, on that price I set. I set it at a price to compete with steel.

Q. Right.

- A. The product from the beginning had been sold in competition with steel. I therefore charged more than steel and I still feel because of the advantage of the [fol. 848] product it is worth more than steel.
  - Q. Right. But you were competing with steel?

A. Yes, I was competing with steel.

Q. And you are still competing with steel?

A. I am still competing with steel.

Q. Isn't it a fact that building contractors ask for quotes on buildings, they ask for alternate quotes on steel and aluminum conduit? A. In an awful lot of cases, yes.

Q. And it is a question of price and other factors that determine whether or not they will use it?

A. Yes.

· Q. And if aluminum is cheaper and has all the desired properties, aluminum will win. And if steel is cheaper, steel will win?

A. I am sorry to say that the price sometimes seems to mean more than anything else. Once in a while you will find an outfit that will give credit to its advantages, but usually it is the price that determines.

Q. Representing ALCOA, I feel like a traitor when I ask a question like this, but does aluminum have certain dis-

adyantages?

A. Well, yes. As I mentioned previously, wire pulling seems to be a bone of contention with the steel people. [fol. 849] They yell about how much harder it is to pull wire. Of course, it is a soft metal. And if they use a steel tube in pulling wire it will tend to cut in around the elbows or bends. We recommend a nylon tape to pull and then we coat it with wax to lubricate the wires when they are pulled through. By doing that, actual tests have been made showing that there is no difference. However, if you don to it, don't do these things, steel is right.

Q. Isn't it also true, and again I hate to say this, that aluminum is more easily damaged and dented than steel is, and the problems of handling aluminum may be a little

more severe than they are in steel?

A. Well, it is softer. However, frankly, if you drop a 4-inch steel pipe from the top of this room to the floor, you are going to have the same effect as when you drop aluminum. Because you have three times the weight and it goes harder and so on. However, as far as laying on the floor and you drop something on it, naturally, being softer, it would be damaged.

Q. So each of them have certain advantages and certain disadvantages. I remember you mentioned the appearance of aluminum being one factor?

A. Yes.

[fol. 850] Q. Of course, a lot of conduit is enclosed in the wall and appearance doesn't matter?

A. That's right, or in concrete.

Q. Or in concrete. And steel has galvanized some of its conduit so the galvanized appearance is pretty much the same as the aluminum appearance?

A. Yes.

Q. So, all in all, there is pretty keen competition between aluminum and steel conduit, wouldn't you say, in the market place?

A. Yes. I like to think in time we are going to take most of it from steel. We have enough reasons to do it.

Q. Me, too. Now, in extruding and drawing your pipe, when you draw, you extrude from 6 inch billets?

A. Yes, sir.

Q. Do you get any of that, do you get any of your raw materials from sources other than domestic producers?

A. Well, I buy some metal from ALCAN, if you con-

sider that other than domestic. .

Q. Well, it is on the other side of the border.

A. Sometimes we think of Canada as being our blood cousins.

[fol. 851] Q. Do you buy any in foreign markets?

A. No.

Q. Do you use any secondary metal?

A. No. I tried a couple of loads, but I was not pleased with the finish and so on, and the price difference, especially in my part of the country, so it was not advantageous to me to buy secondary.

Q. I suppose largely due to your efforts in the aluminum conduit business that your sales have increased from 1950

to date?

A. Yes, yes. I wen't say how much I had to do with it, but at least they have increased.

Q. And have they increased steadily each year?

A. Well, we have only made a little money the last couple of years.

Q. I ask on the volume of sales.

A. In volume, yes.

Q. I suppose everybody is up against the price situation?

A. Yes. No profit.

Q. But your volume has increased steadily in recent years?

A. Yes, sir.

Q. Would you say that the curve was-

A. The last two, especially, the last three years.

Q. The curve is uninterruptedly up?

[fol. 852] A. Yes.

Q. I think I have only one more question. When you report to the Census of Manufacturers do you recall what form you report on?

A. I sure don't. We report, but in what way, I couldn't

answer.

Q. Do you know whether you report conduit on Form

MA36-K; would you know?

A. Since I don't make the forms out, my office manager does, I could not honestly answer. I know we fill out a form, I sign it, but in what form it is to go out, I am not positive.

Q. Would it be possible that you report it under the form requiring reports on structural shapes, rods, rather than on the form requiring the report of wiring devices

and supplies ?

Mr. Wertheimer: I object, your Honor. This witness said he doesn't know.

The Court: Yes, but he calls his attention to another form and asks if he knows. That is the substance of the question. There are apparently two forms on which he could report, if I understand the question.

Mr. Bergson: That is correct.

The Witness: As I recall, it doesn't look like that [fol. 853] form there. But, again, I repeat, I am not positive of the form number itself.

Q. This form MA36-K is for wiring devices and supplies, and this is the Census code for conduit among other things?

A. That is M36-K?

Q. MA36-K.

A. I really can't be positive about it. I know we fill out some forms.

Q. But that doesn't look like it?

A. That doesn't look like it.

Mr. Bergson: Thank you.

# Redirect examination.

#### By Mr. Wertheimer:

Q. Mr. McNair, you are aware that the Census reports

are required by law?

- A. I am aware that some report is. The one that we are filling out, I assume. Whether this one I am filling out is violating the law or not, I can't answer. We do fill out a Census form.
  - Q. You do fill out a Census form?

A. Yes.

Q. And to the best of your knowledge, you are not failing to fill out any form?

A. That is not required, to the best of my knowledge.

[fol. 853a] Mr. Wertheimer. Thank you.

(Witness excused.)

The Court: Take a short recess.
The Clerk: Court will be in recess.

(At this point a short recess was taken after which the trial was resumed.)

[fol. 854] LAWRENCE A. HARVEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Melchior:

Q. Would you state your name and place of employment?

A. Lawrence A. Harvey, Harvey Aluminum, Incorporated, Torrance, California.

Q. What position do you hold with Harvey Aluminum?

A. Chairman of the board of directors, and executive vice president of the corporation.

Q. How many years have you been in the aluminum

business, Mr. Harvey?

A. Well, principally as an active participant since September, 1946.

Q. What general business is your company engaged in?

A. We are an integrated primary producer of aluminum, of raw products.

Q. Would you state your approximate annual sales?

A. 86 million dollars last year.

[fol. 855] Q. Where are your plants located?

- A. The Dalles, Oregon; Salem, Oregon; Torrance, California; Milan, Tennessee; Adrian, Michigan and 14 other factory branch sales locations.
  - Q. Do you have aluminum reduction plants?

A. Yes.

Q. Where are they located?

A. Dalles, Oregon.

Q. Do you have a fabricating plant to fabricate aluminum products?

A. Yes.

Q. Where is it located?

A. Torrance, California and Adrian, Michigan.

Q. Would you state specifically what aluminum products you do manufacture and sell. You don't have to give us too much detail, because I understand you have a fairly broad line, so you can give it to us in a particular category.

A. We produce primary aluminum and all of the aluminum rod mill products, with the exception of sheet, plate,

scrap, foil and cable.

Q. You do not produce aluminum wire and cable, is that correct?

A. We do not currently.

[fol. 856] Q. Are you an integrated producer of primary aluminum?

A. We are.

Q. Are you generally familiar with the processes involved in the production and sale of aluminum conduit?

A. I am.

Q. How long have you been producing and selling aluminum conduit?

A. Past two years.

Q. Since 1960 !.

A. Since 1960, yes.

Q. What type of aluminum conduit do you sell?

A. We sell what is known in the trade as rigid conduit.

Q. Is that the only type of aluminum conduit you sell?

A. Yes, sir.

Q. What raw material do you use in manufacturing aluminum conduit?

A. Our primary metal is the primary raw material.

Q. Where do you get that? .

A. We produce it ourselves. We are our own pro-[fol. 857] ducers.

Q. You produce the raw material yourselves?

A. Yes.

Q. Why did you decide to go into the aluminum conduit market in 1960?

A. Because of an economic study made of the market potential and possibilities in various product fields, we picked among others the aluminum conduit business after study for a number of years of its potential over the past and future.

Q. Would you state what these studies showed! I didn't hear your last remarks.

A. It showed there would be a growing application for aluminum rigid conduit in the electrical products field, due to the general acceptance, in our opinion, of aluminum, due to the general growth of the electrical industry as a whole, and the general prosperity, economic growth of this country.

Q. Did you hear the previous witness, Mr. McNair, testify generally as to a number of advantages possessed by aluminum conduit?

A. I did.

Q. Do you generally agree with his remarks along those [fol. 858] lines?

A. In general. I do not agree with his negative remarks.

Q. Would you care to add to his remarks, with respect

to the advantages of aluminum conduit?

A. Well, we think among the major advantages of aluminum that he did not mention is appearance, (1), neatness of the job; (2), ease of fabrication, which means a reduction of labor cost, of manpower in the larger diameter conduit is easier to install, less physical burden on the personnel. The people in the electrical industry prefer lighter weight products because of the ease on the back and stomach muscles in the handling and installation of the equipment.

Q. Now, Mr. Harvey, may I caution you it would be be better if you would speak a little more slowly because we have to get the testimony into the record and the reporter may not be able to keep up with your testimony.

A. She seems to be doing very well.

Q. I didn't mean to insinuate—does your company publish a catalogue of aluminum rigid conduit?
[fol. 859] A. Yes; it does.

(Government's Exhibit 495 marked for identification.)

Q. Mr. Harvey, I hand you Government Exhibit 495 for identification and ask you if you can identify it?

A. Yes. This is a brochure on aluminum rigid conduit, which includes our general product catalogue describing the aluminum rigid conduit made by us, the advantages of rigid aluminum conduit, and a certain amount of comparative weight charts in relationship to aluminum versus steel, and certain other sales and code approval literature all affecting merchandise promotion of aluminum rigid conduit by us.

Q. Was this catalogue prepared under your general direct

supervision?

A. Yes, it was.

Q. To the best of your knowledge and belief, are the facts set forth therein true?

A. They are.

Mr. Melchior: We offer Government Exhibit 495 for identification.

The Court: Received.

[fol. 860] Q. Does your company publish price lists for alumnum rigid conduit?

A. It does.

Q. When was the first price list issued?

A. The first price list was issued in—let me fresh my memory by looking at my notes—it was published first on March 1, 1960.

Q. Have there been any changes in your price list since that date?

A. Yes, there have been.

Q. Would you state what they have been?

A. Well, they have been a series of unfortunate price reductions, and they have been continuous, and the first price reduction was issued on April 1st, April Fool's day, 1960 and it amounted to two and a quarter percent reduction. And again on August 26, 1960 a five percent reduction. And then again on January 17th, 1961 the accessories or what we might call elbows and couplings were further reduced by five percent, and then on April 10th, shortly after Fool's day again 1961, prices were again reduced five percent, and then there is a subsequent catalogue price sheet September 14th, 1961.

Q. Now from a percentage standpoint can you estimate [fol. 861] what these reductions totalled from the original one back in 1960?

A. The published sheet shows reduction in excess of about 12½ percent.

Q Now, have your competitors in aluminum conduit, made the same or similar price reductions, to your knowledge?

A. To my knowledge they have.

200

Q. Have any of your competitors, to your knowledge, made any additional reductions by discounts or otherwise in these published price lists?

A. To the best of my information and belief, yes.

Q. To what extent have they done this? Can you elaborate on that a little bit, if you know?

A. Well, to the best of my knowledge there have been variable prices by various members of the trade. Among them were illustrated by the testimony before the court here earlier during this trial, and even today, in which variable prices have been quoted by various people, either through distributors or directly to electrical contractors, in order to either encourage the sale of material or to be competitive with prices of other competitors.

[16]. 862] Q. Do you know which of these competitors of yours made these price reductions? Can you identify them?

A. To the best of my knowledge and belief, all of them.

Q. And who does that include?

A. All of the primary producers—Kaiser, Reynolds, Alcoa, associated companies of Olin, and some of the larger independent companies such as Channel Master, Jasco, Hazelwood Engineering.

Q. Now, Mr. Harvey, what change has there been, if

any, in the market price of primary metal during this same

period from 1960 to the present time?

A. Well, the price at the beginning of the time we started in the conduit business of the primary metals was 24.7. It subsequently went to 26 cents, and more recently it dropped to 24 cents; that is the current United States published price, but it does not necessarily mean it is the price at which some metal is sold in this country.

Q. Do you know what the market price is today? Is there

a market price?

A. Yes, there is an official market price published by the [fol. 863] American Metal Market, a daily trade journal for the metal industry, and there is an official published price by the major primary producers which is 24 cents.

Q. Now, would you say the price trend since 1960 in the primary metal has been downward, remained the

same, or-

- A. I think I would better characterize it by saying it has attempted to raise or lift itself to cover increased operating costs and expenses, but because of competition within the industry both domestically and abroad, the tendency has been for it to lower itself.
- Q. Can you give me an indication perhaps or a percentage basis of how much this is?
- A. I would say the price drop amounts to about 8 percent.
- Q. Now, Mr. Harvey, do you sell accessories along with aluminum conduit?
  - A. Well, if you refer to elbows and couplings, yes, we do.

#### [fol. 864] By Mr. Melchior:

- Q. Do you sell any aluminum conductor wire and cable?
- A. No, we do not.
- Q. Do you sell any conductor wire and cable?
- A. No, we do not.
- Q. That is one of the products I believe you stated earlier that you do not make?
  - A. That's right, sir.
- Q. Do any of your competitors in aluminum conduit sell those three items?
  - A. Yes, they do.
- Q. Would you identify each of your competitors who do this?

- A. Yes. They are Kaiser, Reynolds, Alcoa, Olin, and a number of—no, I don't know of the independents, I don't think any of the independents do in the conduit business. Just the primary producers that sell the wire and conduit, the four I mentioned.
- Q. And accessories. Now, when your competitors, your integrated competitors sell these products, do they on occasion sell them as a package, as the term-might be used in the trade?

Mr. Bergson: If he knows.

Q. If you know.

A. To the best of my information during the course and [fol. 865] conduct of my business, it is my inderstanding in the trade that it is generally sold as a complete distributor line and not necessarily as an individual item, to be sold as a distributorship item. For example, if I may illustrate, I don't know of any particular occasion as such per se in which they have gone out and sold conduit with the offer of full line, where they have not either asked, insisted upon or tried to sell the balance of their production line.

Q. How does this practice affect you, if it does?

A. Well, in those areas where is it possible, and it has happened to us, there is what we call in the trade, technically, a package arrangement with the distribution of products and sale by a distributor of a group of items of the general electrical category, it is possible to put a price as a group as distinguished from quoting a price on individual products which may or may not include a discount; which may or may not encourage the sale of the package. We have a case in point. It is not against the defendant here, but against another integrated producer in which the price that we quoted for conduit was substantially less than the cost price quoted by the distributors.

[fol. 866] He advised us it was higher from this other integrated producer, yet he bought from the other integrated producer because the other integrated producer had a cable business and so forth, and if he didn't do that, he would lose his distributorship and his cable business, and therefore, it was sold as a package.

Mr. Bergson: I move to strike that.

The Court: Yes, it has got to be stricken out, unless you lay a foundation for it. How can anybody meet it.

Q. Do you recall this particular incident?

A. Yes, I do.

Q. Can you identify the companies or parties involved?

A. I don't recall the distributor's name offhand, but I do recall the town in which it was, and I do recall the name of the integrated producer.

Q. Would you identify the time when it happened?

Mr. Bergson: I object, your Honor.

The Court: Sustained. He must fix the time and place and who was present.

.Mr. Melchior: I am trying to get that.

The Court: He tells you to start off with that he don't know the name of the distributor involved.

[fol. 867] The Witness: I don't recall it at this time.

Q. Do you recall the time when this incident happened?

A. Yes, I do.

Q. Do you recall the integrated company that was involved?

A. I do.

Mr. Bergson: How would you know the integrated company involved?

The Witness: The information came to me in the normal course of our business.

The Court: Someone told you.

Mr. Bergson: Hearsay.

Q. Who told you?

A. Our sales man contacting the distributor.

Q. Is this the way you get information in your normal business?

Mr. Bergson: This is hearsay twice over. I underscore my objection.

The Court: I will let it in if there is enough foundation so anybody can meet it. I want to know the time, place, the distributor involved and what the distributor said and what anybody else said in connection with this transaction.

Q. Can you give us the time, place?

A. Yes.

[fol. 868] Q. Will you state the time it took place?

A. This took place in Texas, El Paso, Texas.

Q. Can you state the time?

A. Towards the latter end of last week.

Q. Last week? -

A. Yes.

The Court: Who was present?

The Witness: Present was our distributor representative, our direct factory man who works directly under me, and the distributor himself.

The Court: How do you know?

The Witness: It was reported to me by our representative.

The Court: Aren't we getting into hearsay?

Mr. Melchior: Yes, we are, and we are trying to show that it is an exception to the hearsay rule and it comes through to him in the normal course of business. May I examine further?

The Court: Yes. Go ahead, but you have got to find out before you get anywhere and nobody can meet it, the name of the distributor involved, because he wasn't there. Haven't you got to get those things for your [fol. 869] foundation!

Mr. Melchior: Yes.

Q. Do you know the name of the distributor that was involved?

A. I don't recall it.

Q. How many distributors are in that town; do you know that?

A. No, I don't recall the exact number. There are several.

Q. There are several?

A. Yes, there are.

Q. Is this distributor the distributor that you normally deal with?

A. This is the one that we wanted to normally deal with.

Q. What does this mean? .

A. It means that we were soliciting the business and had quoted a price and were told we would receive the order,

and we were subsequently told that we would not receive the order.

- Q. Do you normally attempt to deal with other distributors in this town?
  - A. In this particular case we did not.
- Q. This is the only distributor that you deal with in this town?
  - A. Yes.
- Q. So it can be determined who the distributor is? [fol. 870] A. Yes.

Mr. Bergson: He just said he didn't deal with him.

Q. Is there any other distributor that you normally attempted to deal with in this town? Have you ever attempted to deal with any other distributor in this town other than the one you refer to?

The Court: You mean attempted to sell?

Mr. Melchior: Yes, attempted to sell. Apparently he has been unsuccessful in his attempts to sell.

- Q. Is that correct?
- A. Yes, that is correct.
- Q. And that is the only one you have attempted to sell to?
- A. Since that time your man has attempted to sell to others as well.
- Q. Now, how long after the incident did the report come to you?

The Courf: How does he know, if he wasn't there?

- Q. How did the information come to you, Mr. Harvey?
- A. By telephone.
- Q. And from whom did the information come?
- A. From our representative.

[fol. 871] The Court: Who was he?

The Witness: Who was he?

The Court: Yes.

The Witness: Bryan L. Harvey; my son.

Q. Did your son inform you how long after the incident took place that he notified you of the transaction?

A. If I recall the conversation it was the same day.

Q. The same day. Is this normal in your business operations to receive reports like this on the same day?

A. Yes, it is.

Q. You can identify the integrated producer that was involved?

A. I can.

- Q. The only party you can't identify is the precise name of the distributor?
- A. That's right, but we know that the distributor is the only distributor that your company has ever dealt with, or attempted to deal with, in that town.

The Court: Oh, no.

A. That is not what I testified to.

Q. I misunderstood your testimony, then.

A. We had contracted other distributors on electrical products in the town.

Q. Oh, I see.

[fol. 872] Mr. Melchoir: Well, we submit that sufficient fact basis has been obtained.

The Court: No. Sustained. Why don't you produce the evidence. It is in existence, instead of having to guess. Here is what happens. This man's son calls him up and tells him something of what happened. Where the son got the information from is still hearsay, so you have hearsay based on hearsay. One hearsay is bad enough, but what you are doing is piling hearsay on hearsay. The direct evidence must be available.

What is the name of the producer?

The Witness: Kaiser.

#### By Mr. Melchior:

- Q. Now, earlier, Mr. Harvey, we were discussing, I believe the products of competitors, or some of them. I believe you referred to it as conductor wire and cable, conduit and accessories. Do you believe that offering a related line of goods such as this would be an asset in your business?
  - A. In my business judgment it would be.
- Q. Now, have you ever considered going into the production of aluminum wire and cable?

[fol. 873] A. We have.

Q. Have you ever made any studies as to the price of entry into this field?

A. We have.

- Q. And what have you concluded, if you have? A. There are opportunities in the business.
- Q. Do you feel that aluminum wire and cable would be a valuable addition to your aluminum product line?

A. We do. Q. Why?

A. Because it is a profitable source of manufacturing and distribution and we think it would be an aid to other aluminum products that fit the general type and general product line and that it is a good addition productivitywise to our facilities.

Q. Have you produced ingot and rods suitable for the manufacture of aluminum wire and cable?

A. We produce what others in the trade might term

ingot cable.

Q. Have you ever considered the possibility of acquiring an existing wire and cable producer?

A. Yes.

Mr. Bergson: I-

The Court: No, overruled.

Q. Why have you considered this? [fol. 874] A. As a means of entering the business.

Q. Have you considered this as a possibility of entering the business by building it yourself, by building the facilities yourself.?

A. Yes, we have compared it. .

Q. Have you drawn a conclusion as to which might be more suitable from your standpoint?

A. I can give you both a business opinion and a person Dopinion.

Q. We would like the business opinion.

A. A business opinion would be it depends on the cost of the acquisition. In other words, an analysis of the cost of establishing our own facility or the cost of acquiring an existing facility and the cost of making our own facility which we may acquire and bringing it up to the sales and distribution of an existing business.

- Q. Have you found an estimate of how long it would take to build such an organization?
  - A. Yes.
  - Q. And to secure the necessary know how?
  - A. Yes.
  - Q. What is your opinion on that?
- A. It would take us not less than two, and I believe it would take us five or six years to make a substantial im[fol. 875] pression upon the market.
- Q. Would it require the expenditure of substantial funds?
  - A. Yes, it would.
- Q. Have you formed an estimate as to how much it would cost to go into the business in the manner you have considered?
  - A. Yes, we have.
  - Q. Can you tell us your findings on that?
- A. The order of magnitude we had under discussion was about five million.

The Court: But, you see, unless I have some idea of the order of magnitude it don't help me a bit. You can go out and buy this business for some five million dollars or a one million dollar basis.

The Witness: You could, your Honor, but I don't think it would be competitive enough unless it was a large enough scale.

The Court: What I am pointing out to counsel is that it doesn't help me a bit, this kind of testimony. Your question is have you thought about going into the business and how long it will take you to get into the business that you [fol. 876] desire to be in, and of course, I assume anybody can go out and if, they want to get into a business, the steel business, they can buy—

The Witness: Some people don't want to sell the business.

The Court: That's right. That's right.

#### By Mr. Melchior:

Q. Were you generally familiar with the operations of the Rome Cable Company prior to its acquisition by ALCOA?

A. Not with the details of the operations, no, sir. Only a general knowledge of the trade.

Q. Would this be a type of operation you would feel necessary for you to go into in order to be competitive?

A. In some phases of the work, yes, but not in all.

Q. You wouldn't have to go into all the constructions they were in?

A. I don't believe so.

Q. You could go in on a substantially smaller basis and be competitive, you feel?

A. On some of their products and some of their produc-

tion line.

Q. But not their broad line.

A. What I mean, we are in the aluminum business and they are in the copper and aluminum business, and our interest lies in the aluminum business and not in the [fol. 877] copper business.

Q. What is the minimum expenditure funds you would feel would be necessary to put you in the aluminum wire

and cable business and to become competitive.

A. I would appreciate it if you would rephrase the question because it is so broad that unless I set forth the basic postulates behind it and how broad we intend to set up a competition, it would be almost impossible to answer it.

Q. You are a producer of aluminum ingot?

A. Yes, sir.

Q. You have facilities for producing ingot and billet?

A. Yes.

Q. You have facilities for producing aluminum wire bar?

A. Yes, we do.

Qa And you have facilities for producing aluminum rod suitable for manufacturing aluminum wire and cable, is that correct?

A. We do have, but we do not think they are of such a nature in character as to currently be competitive.

Q. In other words, if you were going into the aluminum wire and cable business you would have to improve your existing facilities with respect to aluminum rod?

A. We would plan to build new facilities.

Q. Can you form an estimate as to what you think the [fol. 878] minimum estimate would be to improve your rod making facilities to make you competitive in the aluminum wire and cable business?

A. I have previously stated that our estimate, with the

size of plant we contemplate, what we thought was our reasonable share of the market development, would be in the neighborhood of five million dollars.

Q. This would include the rod making facilities as well

as the wire drawing?

A. This would include rod making facilities, wire drawing, wire stranding, what we call the birds and the flowers, which means both, which means uninsulated wire, whether it be carried on a steel wire conductor or core wire and multiple strand and including the insulation.

Q. Do you think there would be any problem involved in

know how in acquiring the know how in this field?

A. Yes, I do.

Q. Have you presently, or do you presently have within

your organization, sufficient know how to do this?

A. I will answer you, and I don't want to be facetious, as you know, yes, and no. Yes, we have the management and technical know how, but no, we don't have the engineering personnel of sufficient size and number to carry [fol. 879] on the production.

Q. This would be another factor you would have to

consider in going into this business?

A. Yes, sir.

Q. Now, Mr. Harvey, do you consign aluminum conduit to your customers?

A. Yes, we do.

Q. Now, do you consider this consignment practice to be something in the nature of a credit advancement to your. customers?

A. Yes, we do. Q. Why do you do it?

A. We do it in order to meet competition.

Q. Your competitors do it?

A. They do.

Q. Which of your competitors do it?

A. To the best of my knowledge and information, all of them.

Q. Now, what share of your aluminum conduit sales are on consignment? You can do this perhaps several ways. Let me put it this way. How many distributors do you have throughout the nation?

A. Well, if I might refer to my notes in order to help

me along, in the States of Arizona, Washington, Oregon and Southern California, we have a total of 27 distributors [fol. 880] of Harvey Aluminum Rigid Conduit.

Q. Now to how many of those 27 do you consign rigid

aluminum conduit?

A. We consign to 16 of them.

Q. And the remainder?

A. Outright purchases.

Q. Now, on a percentage basis, considered from the standpoint of modetary return, could you form an estimate as to what percentage is consigned?

A. You are talking from a dollar point of view?

Q. Dollar standpoint.

A. I don't recall offhand, but the bulk of the sales made by us on our merchandising program has been outright sales. When I say the bulk I am saying more than 50 per cent, according to the best of my memory and recollection.

Q. Do you find this consignment practice that you engage.

in an expensive sales practice?

A. I do consider it an expensive sales practice and consider it a price discount.

Q. Do you consider it a price discount!

A. Yes.

[fol. 881] Q. If you know, I believe you stated your competitors also engage in this consignment practice. If you know, do any of your competitors use other forms or systems of financial credit to their customers in selling aluminum conduit?

A. To the best of my knowledge, information and belief, they do.

Q. What other forms do they use, if you know?

The Court: Hadn't we better find out who does it and in what different forms who does it? How can anyone meet—how do I appraise any such thing—unless we get down to something specific.

Q. Would you state who your competitors are that use some or all of these other forms of credit advancement?

A. Kaiser, Alcoa, Reynolds.

The Court: Tell us what Kaiser uses.

The Witness: I will answer you for Kaiser, your Honor, and Alcoa and Reynolds, the answer is the same. They all follow the same practices.

The Court: All right.

A. (Continuing) They have what we call general con-[fol. 882] signment, which is a common term, and secondly extension of credit. The normal credit in the aluminum business is thirty days, the normal payment is sixty days. In a number of instances goods have been manufactured and kept on order under what we call "make and hold" by the manufacturers and then subsequently delivered to the various distributors or the distributors customers at a later date because of the time of placement of the order. It is a method of financing inventory or incidentally of the type or nature of product in quantity. Which means, instead of accepting payment when due, in lieu thereof treating the account as current and so reporting it in the trade when it is not in fact current, by taking notes for past due accounts the maturity date of which is even further removed than the original maturity date of the original obligation. We feel this is a very substantial and very material competitive disadvantage, and only a large concern with large financial resources can afford to engage in this sort of competitive selling.

We fortunately have the financial means in order to meet this particular competition, but if we were not [fol. 883] otherwise so financed and because of large capital required this is followed universally in the trade, it becomes a very severe restriction on competition. It means the larger more substantial accounts can go to those with larger and more substantial resources. I don't think there

is any question about it.

I am talking about my judgment of what will and can happen in the future.

The Court: All I was trying to get was the names of the parties that did it and what they did. I guess you have covered it.

The Witness: I have, sir. -

#### By Mr. Melchior: ".

Q. Mr. Harvey, what are your approximate annual sales of aluminum conduit currently?

A. Well, let me look at my notes and refresh my—you are asking dollar sales?

Q. Dollar sales will be satisfactory. Just approximately. We don't want you to disclose any precise figures unless you want to.

A. Well, I don't know that there are very many secrets in [fol. 884] the trade. The sales volume is about \$900,000.

Q. How much was that?

A. Currently running at the rate of approximately \$900,-000. I might say it is a poor job.

The Court: This would be a good place to stop. You gentlemen are excused until two o'clock.

(Whereupon, at 12:40 p.m., a recess was taken until 2:00 p.m.)

[fol. 885]

AFTERNOON SESSION

2:15 p.m.

APPEARANCES :- As before.

The Court: All right, Mr. Melchior.

LAWRENCE A. HARVEY, resumed the stand and testified further as follows:

# Direct Examination. (Continuing)

### By Mr. Melchior:

Q. Mr. Harvey, before we recessed I want to set the record straight on one thing. I believe I asked you which of your competitors utilized the practice of consignment. Would you state your answer to that question?

A. As I recall, my answer was that our principal competitors were Kaiser, Alcoa and Reynolds who followed

the practice of consignment.

Q. I see. Mr. Harvey, where do you sell aluminum conduit?

A. This past year we sold it principally on the West Coast, but this current period we are attempting to establish nationwide distribution for the commodity.

Q. How do you sell it?

A. What do you mean by that?

[fol. 886] Q. What pricing system do you use? Do you use the zone pricing system that we heard something about in this proceeding?

A. Yes, we do.

Q. Is this the zone pricing system-

A. Yes, it is.

Q. —that has been testified to by earlier witnesses?

A. To the best of my memory and recollection it is similar to what was testified to by the previous witness.

Q. I believe you said you were trying to develop a na-

tionwide distribution.

A. Yes, sir.

Q. What success are you having in this respect?

A. Not too much at the present time.

Q. What steps are you taking to develop this?

A. We have personnel under our marketing program working directly under the commodity division handling this particular commodity who have gone around to various major distributors throughout the United States and have attempted to solicit their representation for our particular items.

[fol. 887] Q. Do you intend to use manufacturer's agents?

A. No. Our basic policy of distribution is to use legitimately established and recognized in the trade electrical wholesale distributors. We had to supplement our sales staff which in effect is the alter ego of the salesman, and use others in the area where the cost would warrant that program.

Q. Have you ever built a distribution in your other fields?

A. Yes, we have.

Q. How long do you think it would take you to build a nationwide distribution in this field?

A. I can best characterize it by saying it may take several years, two, three, four or five years to establish a full distribution program.

[fol. 888] Q. Are there any problems involved in building such an organization?

A. Yes, there are.

Q. Would you want to elaborate on some of the major ones?

A. Well, among the characterizing the general prob-

lem, one of them, of course, is meeting competition in different areas. Competition in one area may be different than another. It may not be nationwide; it may be regional, which has to do with price structure. You have the problem of getting public acceptance of the product, which means both by the consumer and the appropriate public authorities that have supervision over the construction industry.

We also have the problem of whether or not the proper representatives that we have and the salesmen we use are properly trained and educated, and we have the problem of the proper distributor, whether or not they are now precluded by virtue of existing arrangements with other distributors of like products, so we won't have a conflict of interest between the two. Whether or not they are capable of carrying on and paying their bills. Whether in cer-[fol. 889] tain other areas the credit practices are such as to affect prices. Things of that general character.

Q. Are you generally familiar with the type of sales and distribution organization that Rome Cable had prior to its

acquisition by Alcoa?

A. Just what is commonly known within the trade. I don't have specific and detailed knowledge of the specific distribution system.

Q. Do you know what sort of reputation its distribution

organization enjoyed in the trade?

A. According to my best information and belief, a very excellent reputation. Considered one of the outstanding

insulated cable and wire firms in the business.

Q. Now, from your experience in building a nationwide sales organization, could you venture an opinion as to how long it might take to build such an organization should you have the purpose to do it?

Mr. Bergson: Your Honor, I have refrained from objecting because of relevancy, but it is going awfully far afield.

[fol. 890]. The Court: Hasn't he already told us that it would take two, three, four or five years?

Mr. Melchior: I was trying to tie it in to Rome's— Mr. Bergson: He said he has no knowledge of Rome.

The Court: He has no intimate knowledge of Rome, just generally. I don't see how you can-

Q. Are you able to form an opinion, based on your knowledge of building a national sales organization and based on your knowledge of Rome's setup?

A. I believe so.

Mr. Bergson: Wait a minute. I don't even know what the question was.

(The pending question was read by the reporter.)

Mr. Bergson: What is the question? Opinion of what?

The Court: The question isn't complete.

Mr. Melchior: No. I want to ask him if he can form [fol. 891] an opinion as to how long it would take to build one of the size and caliber of Rome, if he has formed an opinion.

Mr. Bergson: He says he doesn't know.

The Court: Sustained.

Mr. Melchior: Have you formed an opinion.

The Court: First get some idea of Rome's.

Mr. Melchior: I think he stated he had a general idea,

The Court: Yes, a general idea; it is a very excellent company. Very excellent sales practice; something of that kind.

# By Mr. Melchior:

Q. When you mentioned the type of sales organization that you desired to build in connection with conduit, aluminum conduit, did you have in mind that that sales organization would be the equivalent of what you understood Rome's to be?

Mr. Bergson: I object, your Honor.

The Court: Sustained. He hasn't told you what he [fol. 892] understood Rome's to be.

Q. How familiar were you with Rome's organization as it existed prior to its merger with Alcoa?

A. Only that which was common knowledge in the trade. General information about the company and its product and general conduct of business.

Q. Are you generally familiar with the location of its sales offices?

A. Not with all of the sales offices, no, sir.

Q. Are you generally familiar with the location of its warehouses?

A. Not all of them, sir. Those in our area, I know of.

Q. Have you ever placed an offer to supply aluminum conduit to any major construction project?

A. Yes, we have.

Q. Would you identify any of these projects? .

A. Well, we have offered to supply aluminum on a major airport job in the United States. The only one of recent consequence we have offered and tried to promote.

The Court: The question is bids; have you submitted [fol. 893] bids. I don't know whether you are drawing a distinction between offering and bids. The question is, have you submitted bids on some major construction contract.

The Witness: In some cases, yes, sir.

The Court: Go ahead.

Q. Would you identify any of these major projects upon which you bid aluminum conduit?

Mr. Bergson: Your Honor, I don't see the relevancy of all this.

The Court: Well, I actually don't either, but tell us.

Mr. Bergson: Job by job?

The Court: Tell us when this happened.

Mr. Melchior: I will do that, if he can identify-

The Court: What is the purpose of it?

Mr. Melchior: I want to show what obstacles are faced even by an integrated aluminum producer who is selling conduit, what he will have to face in meeting competition.

The Court: Well, all right.

[fol. 894] Mr. Bergson: What has that got to do with the merger?

The Court: I don't know. When was this bid you are about to give us?

The Witness: The bid I have in mind—if we are referring to a bid as an offering, actual offering, the one I have in mind took place about two years ago. If you talk about an attempt to negotiate business, and the refusal of the customer to accept even a bid from us, it is very recent.

The Court: Let's keep to the one thing. The question is bids. Have you submitted a definite bid for some large con-

struction contract is the question, and I assume the answer is yes.

The Witness: Yes.

The Court: When did that take place?

The Witness: Well, we don't do it directly, we do it indirectly through our distributor. If you ask again, it is third-hand knowledge.

[fol. 895] Q. Can you identify the major project that you either bid upon or made an offer to supply conduit on?

A. Yes, I can.

The Court: I think you ought to separate it, because an offer doesn't mean a thing, Mr. Melchior.

Q. Did you bid or offer to sell conduit to this project?

A. Yes.

Q. Which did you do?

A. We offered to sell it.

Q. Would you identify this project?

A. The project I have in mind is known as Century City, which is a development of the Twentieth Century Fox movie studio in Beverly Hills, in the City of Los Angeles.

· Q. And when did this offer which you made take place?

A. Two weeks ago.

Q. I didn't hear your answer.

A. I believe it is two weeks ago.

Q. Can you give me an idea as to the size of this project?

[fol. 896] Mr. Bergson: I object, your Honor. I don't know what we are trying here.

Mr. Melchior: If the Court please, I can explain what I think the relevancy is as I have explained the relevancy of these other factors.

The Court: Yes, a good many of which I don't agree with you but I have taken. Now, if I let this man go on and tell me about offers, he probably makes offers every day and they are not accepted. I assume there isn't an aluminum company or any manufacturing company that don't have that experience, for one reason or another. It seems to me we are going awfully far afield in taking up something that happened out in California where some offer was made and not accepted. Isn't that a common thing in every trade?

Mr. Melchior: No, I think the important thing is the circumstances under which this company failed to get the particular contract because we think this is indicative of [fol. 897] business conditions as they presently exist in the aluminum conduit field, and it is these business conditions that we must consider in evaluating the probable effect of this merger. We cannot look at a particular merger in a glass house. We have to look at this merger in the context of business conditions, and the only way we can show to the Court—

The Court: That's right. Now, suppose that the defendant, and I don't assume they will and I am warning them I won't let them, but they will go on and I suppose they can get a lot of companies who made offers and have them accepted. You know that must be true, because an industry goes on and on. So that the trouble here is that I can't see how I evaluate it.

Mr. Melchior: I don't think the important thing is whether they were successful or not. I think the important thing is if they were not successful the reasons why they [fol. 898] were not, which is what we are attempting to bring out.

The Court: Then if you bring out the reasons why they were not successful, then I suppose they can bring out the reasons why they were successful and so on infinitum. I wonder where the end of a lawsuit of this kind is when we once get started telling about the individual experiences on where a man failed or was successful. I don't see how it proves anything.

Mr. Melchior: Well, we feel that we can cite particular instances as examples, and we have had an array of witnesses so far who are citing a number of conditions which sound similar throughout the country.

The Court: Yes, that is why I am so hesitant about it. We have had a lot of them. They had told us the problems that they meet in everyday business.

Mr. Melchior: And we think it is highly relevant, your Honor.

[fol. 899] The Court: Yes, but this, of course, is going on a little different phase. He is telling us something about a bid or offer that was not accepted. The thing that bothers

me is if I once take it, where do I draw the line as to the defendant.

Mr. Melchoir: I think perhaps in this situation we can tie this-particular transaction to the merger of Rome and Alcoa.

The Court: Well, I am going to take it. Let's see what it is. Overruled.

# By Mr. Melchior:

Q. Did you state where this project was located, Mr. Harvey?

A. Yes, I did.

Q. Where was it located?

A. Los Angeles. In Beverly Hills.

Q. And did you give an indication as to what the size of this project was?

A. No, I did not.

Q. Would you do that?

A. To the best of my information and belief, it is-

[fol. 900] Mr. Bergson: I object, your Honor. He is again speculating.

The Court: If you don't know this, witness, please say so.

The Witness: I am only trying to be more explicit. If

you want me to be more explicit I shall be.

The Court: Yes, because I got to be explicit and if all I get are these generalities I don't know where to go to. I have got to be explicit when I decide this case somewhere.

Q. Do you know, would you indicate, from a dollar standpoint, what the size of this project was?

A. Yes. It is over two hundred million dollars.

Q. I take it you consider this a pretty substantial project?

A. I do.

Q. Do you know or can you give me an indication as to what the approximate value of the aluminum conduit contract may be on this job!

A. If the project is fully developed as was reported and told to me personally, the value of the conduit wire job

[fol. 901] should run around a million dollars.

Q. Now, did you talk to the electrical contractor concerning your bid on the contract involved in this job?

A. I did:

Q. With what purpose in mind did you talk to him?

A. I talked, I say "I talked"—my firm talked to the electrical contractor at the first phase of the first building on the job.

- Q. Who was the electrical contractor?
- A. Newbury Electrical Corporation.
- Q. To whom did you or your representatives talk?
- A. Jeffrey Langton.
- Q. And you attempted to bid or offered to supply the aluminum contract on this job?
  - A. We did.
  - Q. And what success did you have?
  - A. None.
- Q. Did you discuss your lack of success with the contractor?
  - A. We did.

[fol. 902] Q. And what did you tell him?

Mr. Bergson: When you say "we", who do you mean?

The Witness: My firm. Mr. Bergson: You didn't?

The Witness: Not I.

Q. Would you state the results of your conversation with him?

A. We were told that

Mr. Bergson: I object, that is not the result.

The Court: Yes. Again this is hearsay on hearsay. Did you submit something in writing to this electrical contractor that some of us can look at and see what it is about?

The Witness: No, sir, we did not.

The Court: What did you do? Somebody else in your concern told you about it?

The Witness: We instructed our man to go out and make an inquiry concerning the job, which is what we would do under normal course of business.

[fol. 903] The Court: Sure. I find no fault with you, Mr. Harvey. Don't get that idea. Apparently what you did, and I don't have any foundation for it at all, you sent a salesman or some representative to this general electrical contractor; is that right?

The Witness: To a general electric—not the General Electric, but a general electric contractor.

The Court: And I suppose they were ready to do some

phase of that job?

The Witness: Yes, sir.

The Court: This two hundred million dollar job wasn't to be done all at once?

The Witness: No.

The Court: Didn't call for a single contract?

The Witness: No.

The Court: It was split into phases.

The Witness: Yes.

The Court: All right, what is the first phase?

[fol. 904] The Witness: Construction of the so-called Gateway West building.

The Court: That was an individual building, I suppose, a business building of some kind?

The Witness: Yes.

The Court: Did you have some basis for the determination of the amount of the conduit needed in that building?

The Witness: Yes, sir. A general knowledge of what goes

into a high rise building.

The Court: What I mean, did you have any specifications or anything that anybody can check or do anything with, or did you just——

The Witness: Just our business judgment estimate, and

that is all.

The Court: And your representative talked to Jeffrey Langton?

The Witness: Yes, sir.

The Court: Langton is some officer of the electric company?

The Witness: He is one of the managers.

[fol. 905] The Court: He is one of the managers. And after your representative got through talking with Langton he came back and told you something about that talk, I suppose.

The Witness: Yes, sir.

The Court: Now there is your background of your testimony. Now Mr. Bergson objects to it as hearsay. Why couldn't we have the man here, if it is of any importance here. We all know when you pass the results of a conversa-

tion from one to another very often their import is lost, the essentials are lost. We have so many things.

Mr. Melchior: I will try by one question.

The Court: All right.

#### By Mr. Melchior:

- Q. Do you know of your own knowledge whether there were any restrictions which prevented you from being the successful bidder on the conduit?
  - A. Yes, sir.
  - Q. What were they?

[fol. 906] Mr. Bergson: I object, your Honor.

The Court: Yes. Let's find out who placed the restrictions. Maybe somebody said the mayor of the town, if this is a town proposition, that they won't buy anything from anybody outside the town of California.

Q. Do you know who placed these restrictions upon this contract?

A. Yes, sir.

The Court: Who was it?

The Witness: Aluminum Company of America.

Q. Would you state what those restrictions were?

The Court: Just tell us how the Aluminum Company placed the restrictions.

The Witness: I was told that by the chairman of the board of the corporation—

The Court: Oh, God bless us. Strike it out.

Mr. Melchior: I might explain, your Honor, why we didn't have a chance to investigate this matter, as this just [fol. 907] came to our attention since the trial commenced.

The Court: Well, you can get him here next week if there is anything of importance that somebody has done. Let's have it directly. If we go ahead and try this case on what somebody else told somebody, why we just get into a rather fine mess.

Mr. Melchior: Well, we submit that in cases of this type sometimes we will have to relax the ordinary rules of evidence.

The Court: You know, counsel, I have relaxed it in this case time and time again.

Mr. Melchior: Yes, you have.

The Court: But when you get down to something like this, when there is an insinuation of wrongdoing and the direct testimony is available, you got to produce it. In this court anyway. I am not going to let you wholesale it in the way we have let a lot of it in, and I find no fault in that. But when you get down to and are charging Kaiser, for instance, with [fol. 908] some improper trade practice, there is no excuse for not having the direct evidence that I know of.

Mr. Melchior: We don't mean to insinuate that what the company was doing here was improper. We are just show-

ing that it was the practice in the trade.

The Court: You have a perfect right to show it, but you can't do it if it is hearsay in that way. That Alcoa placed a restriction upon some particular building out somewhere in California. If they did, let's find out who did it and how it was done.

#### By Mr. Melchior:

Q. Do you know of your own knowledge who the successful bidder on this contract was?

A. Are you talking about the electrical contractor?

Q. The aluminum conduit contractor.

A. Following the judge's instructions, all I know is what our staff reported to me.

The Court: I will let you tell who the successful bidder [fol. 909] was. .

The Witness: The successful bidder was Newbury Electric Corporation.

Q. And who is Newbury Electric Corporation?

A. What was the original question you asked me?

Q. The successful bidder on the aluminum conduit contract.

A. I do not know who the successful bidder is. I only know who was specified.

The Court: What was the last?

The Witness: I only know who was specified.

Q. Do you know of your own knowledge who was specified?

The Court: What do you mean by "who was specified"? The Witness: Well, your Honor, normally in an architectural venture of this character I am referring to, either the architect or the owner specifies the raw material. He says "I want this kind of raw material produced by so-and-so—Standard Sanitary or equal, Jim Jones wallpaper or equal," but in this particular the contractor told us that in [fol. 910] the drawings he specified a specific brand and none else.

The Court: Who drew the drawings?

The Witness: The architects, Rolfe and Beckett.

The Court: They were hired by the municipality, I suppose.

The Witness: No, by the owners of the property, to make the drawing. That would probably be the best evidence of what was specified.

The Court: Certainly.

Q. Mr. Harvey, from your knowledge of the aluminum industry, do you know whether there currently exists any shortages in the supply of primary aluminum for the domestic market?

A. No, sir, there are no shortages currently.

Q. To your knowledge have there ever been any periods of shortage of primary aluminum since Korea?

A. Yes, there have been.

Q. Would you indicate the periods when aluminum has been in short supply domestically?

[fol. 911] A? Aluminum has been in short supply domestically since sometime in 1947, continuously and periodically. Definite shortages in the country in the supply of primary material. And I think since 1958 there has been a reasonably adequate productive supply in this country plus some imports to satisfy current market requirements.

Q. Do you have a general knowledge of existing and planned capacity for the production of primary aluminum?

A. Yes, sir.

Q. Now, in the light of your knowledge or opinion as to the potential use of aluminum in the future, have you formed an opinion as to whether or not shortages may exist sometime in the future?

A. I have.

Q. Would you state what your opinion is?

Mr. Bergson: I object, your Honor. His opinion as to whether shortages may exist is awfully speculative.

The Court: Well, I know it is.

Mr. Melchior: Well, it's the only thing we can do about the future, counsel.

The Court: That's right. All we can do is guess, and if [fol. 912] history repeats itself I suppose we will have shortages and overages. I guess in most every industry that has occurred, and I assume it is a fair statement it will occur in the future.

The Witness: I concur.

The Court: We have them in farming, and most any manufacturing business. Probably Mr. Harvey's guess is not any better than mine, and I will tell you I will guess we will have them. So we don't need to worry about it.

The Witness: I concur with the judge's opinion.

Mr. Melchior: No further questions.

Cross-examination.

### By Mr. Bergson:

- Q. Mr. Harvey, who are your principal competitors in the conduit business?
  - A. Our principal competitors?
  - Q. In the conduit business.
- A. I think I have recited them before. They are all of the [fol. 913] integrated—not all of them—I'm sorry. If I might be more specific in answer to your question. The principal competitors are Channel Master—the naming of them is not in the order of importance or position; I don't want to put anybody's nose out of joint socially. Channel Master, Alcoa, Kaiser, Reynolds, Hazelwood Engineering, Jasco. Triangle and General Cable.
  - Q. Triangle?
  - A. And General Cable.
  - Q. General Cable. How about Youngstown?
  - A. You are asking me about the aluminum business.

Q. No, I said conduit.

- A. Oh. Well, all the steel conduit competitors are, in our opinion, more serious competitors than those in the aluminum business.
- Q. Whose competition do you meet in the conduit business?
- A. The competition we meet is not only that of the other aluminum competitors, but price changes have occurred by announcement of price changes by Youngstown Sheet and Tube Company.

Q. That is a steel company?

[fol. 914] A. Yes.

Q. Do any other steel companies sell conduit on the West Coast?

A. I believe they do, sir.

Q. Whose competition do you meet in the steel?

- A. Anybody that manufactures steel conduit. It is a direct competitor to aluminum.
- Q. Do you know where the plants of the steel manufacturers are located?

A. I don't know where they are all located.

Q. Other than Rome Cable's plant at Torrance, do you know where any steel conduit plant west of the Mississippi is?

A. Yes, I do, sir.

Q. Who?

A. Youngstown, located at Youngstown.

Q. Youngstown where?

A. Ohio.

Q. Is that west of the Mississippi?

A. No, I'm sorry. I got confused being back east.

Q. Do you know of anybody whose plant is located west of the Mississippi?

A. I don't know anybody in the steel business.

[fol. 915] Q. Now, you talked about the price of aluminum conduit going down.

A. Yes, sir.

Q. I suppose competition forced that price down?

A. Competition from the steel industry, sir.

Q. Mr. Harvey, do you have a supply contract with General Services Administration?

A. Yes, sir.

- Q. Would you explain to the Court what a supply contract is?
  - A. Well-

Q. Let's cut it down a little bit. What is the capacity, the pig or ingot capacity of your aluminum smelting works?

A. I will answer that by making a statement. Our current rate of production is 80,000 tons per annum approxi-

mately.

Q. Are you, under your contract with the General Services Administration, required to set aside any part of that product for sale to non-integrated users of aluminum?

A. We are, sir.

Q. Will you tell us how much of that product you are [fol. 916] required to set aside for non-integrated users?

- A. For the first five years of our operation, which will expire I believe at the end of 1963, we were required to set aside 35 percent of our total production, and thereafter for 25 years we were required to set aside approximately 30 percent of our production. 15 after the first five years. To non-integrated small business.
- Q. In terms of pounds, how many pounds a year would that be?
- A. Well, that would be, say, one third of 54,000 tons, so—
  - Q. 18 times 2,000 about.

A. It is about 18 or 19,000 tons a year.

Q. And you are required to set that aside through 1978?

A. That's right.

- Q. Now, in selling to non-integrated producers do you sell a grade of pig which you call EC pig?
  - A. We sell a commodity which we call EC pig.

Q. What is that commodity?

- A. Well, the word EC means electrical conductivity, and [fol. 917] the standard within the trade is that the aluminum itself, pure metal itself, shall be 99.45. It gives no other general specifications for it, which leaves it up to the individual suppliers to fix a criterion between he and his customer that would be satisfactory for the EC grade used within that particular customer's plant.
- Q. How much pig could you have supplied for electrical supply conductor use if you had demand for it?

A. It varies from month to month according to the grade

produced, but I would say offhand last month we could have supplied 80 percent or about 5500 tons, about 4,000.

Q. 80 percent of your capacity would qualify as EC

grade !

A. I think so, yes, sir.

Q. Now, do you sell this pig to non-integrated producers of electrical conductor products?

A. Yes, we have.

Q. And to whom do you sell?

A. Well, we have sold to South Wire. I will have to look at my list in case you would ask me the question I had some [fol. 918] notes. I will refresh my—South Wire. No conductor pig to Alabama Wire. No conductor pig to Nichols. And some to GE Company. We sold Scoville—I don't know whether they used it for wire conductor or not; it doesn't tell us. Some experimental shipments to General Cable Company.

Q. This material you shipped to Nichols—was this of a quality capable of being used as EC?

- A. It could be, but I don't think it was used for that purpose.
- Q. Did you sell any pig or ingot to Rome Cable prior to its acquisition by Alcoa?

A. No, sir.

Q. Do you feel that Alcoa's acquisition of Rome Cable foreclosed you from a substantial market for pig or ingot?

A. No, sir.

Mr. Bergson: No further questions.

Redirect examination.

### By Mr. Melchior:

Q. Mr. Harvey, on these government set-asides you spoke of, who did you say they were set aside for the benefit of? [fol. 919]. A, They were set aside for the benefit of non-integrated small business.

Q. Now, is that who they are set aside for or is it for non-integrated companies and small business?

A. Non-integrated companies and small business. I think your application is correct.

Q. Right. In other words, if you are a non-integrated com-

pany as far as the aluminum industry is concerned, even though you are not small business, are you eligible to purchase this from you?

A. Yes.

Mr. Melchior: That's all.

The Court: Is that General Service?

Mr. Melchior: G.S.A.

Mr. Bergson: General Services Administration.

Mr. Melchior: A government agency.

The Court: Of the United States Government?

The Witness: Yes, it is.

Mr. Melchior: No further questions.

[fol. 920] WILLIAM LOUIS HENDRIX, called as a witness on behalf of the Government, being first duly sworn; testified as follows:

#### Direct examination.

### . By Mr. Mahaffie:

Q. Mr. Hendrix, what is your occupation?

A. I am the treasurer of the Hendrix Wire and Cable Corporation.

Q. Where is the Hendrix Wire and Cable Corporation located, sir?

A. Milford, New Hampshire.

Q. Mr. Hendrix, will you briefly describe your educational background?

A. Yes. I have graduated from Purdue University with a bachelor of science degree in electrical engineering.

Q. And what has your business experience been, sir?

A. Principally in the wire and cable business. I was three years with Anaconda Wire and Cable Company at Marion, Indiana, and I was fourteen years with the Okonite Company.

Q. Have you ever worked for a public utility?

A. Yes, in between, for a period of five months between [fol. 921] my employment with Anaconda Wire and Cable

and the Okonite Company, the Indiana General Services Company, in Marion, Indiana. An electrical public utility.

Q. Approximately how long have you been engaged in one aspect or another of the wire and cable business?

A. About twenty-seven years.

Q. All right, sir. How long have you been associated with the Hendrix Wire and Cable Corporation?

A. We are in our eleventh year.

Q. All right, sir. You have described yourself as treasurer of the Hendrix Wire and Cable Corporation. Do you own stock in the company, sir!

A. Yes, sir.

Q. Are you the principal stockholder?

A. Yes

Q. You were with the Okonite Company until when, Mr. Hendrix?

A. May of 1950.

· Q. What did you do in May of 1950?

A. Started a company on my own ideas of covering line wire.

[fol. 922] Q. What is the name of that company?

A. That was called the Hesco Electric Products Company.

Q. Located-where?

A. Norwich, Connecticut.

Q. That company you stated was started on the basis of one of your ideas?

A. Yes.

Q. In the nature of an invention?

A. A machine to apply concentric covering to electric conductors for overhead use.

Q. What type of conductors were you covering?

A. Aluminum.

Q. What became of that business?

A. The business was closed down because of lack of raw material which was due to the Korean war. They went on priority and we had no priority. Just couldn't buy it.

Q. What was your next step?

A. My next step was in June of 1961 when we formed the corporation, the present corporation.

Q. Did you/mean 1951 or 1961!

A. 1961. 1951. Yes, the following year.

Q. You formed the present corporation?

[fol. 923]. A. Yes.

Q. All right, sir. Are you associated as an officer or director with any other corporations?

A. Yes, we have a sales corporation, that is, a sales distributor called Hendrix Engineering Sales, Incorporated.

Q. Any others?

- A. Yes, there is another corporation that has to do with manufacturing of installation tool for our particular type of cable, called the Hendrix Wade Corporation.
  - A. Any others?

A. That's all.

Q. Is there also a real estate holding corporation with which you are associated?

A. Yes, the Hendrix Real Estate Trust, which owns the real estate property for the factory and the land.

Q. Which of these corporations are manufacturing cor-

A. Hendrix Wire and Cable Corporation.

Q. Are all these corporations located at Milford, New Hampshire?

A. Yes.

[fol. 924] Q. And you are associated with all of them?

A. Yes.

Q. Is the stock ownership in all of these corporations the same?

A. No, sir.

Q. Why do you have separate corporations for these operations, Mr. Hendrix?

A. The sales corporation was formed so that we might sign sales agreements with Reynolds Metals Company as distributor for their conductors. Since that time we have taken on other manufacturers' lines, such as Standard Transformer Company and Electrical Products Materials.

Q. Why do you have a separate—what is the name of the

Wade Corporation? Why is that separate?

A. Mr. Wade was instrumental in developing a tool. His own business is overhead line contractor.

Q. How much-what is your ownership in that corporation?

A. 50 percent.

Q. What type of financing was used to start the Hendrix .Wire and Cable Corporation?

A. In the way of a loan of \$15,000.

[fol. 925] Q. Where did you get the loan?

A. From Mr. William Howe.

- Q. Did you use any, in starting the wire and cable corporation, financing from Small Business Administration?
  - A. Not until we expanded into our present facilities.
  - Q. That is the facility at Milford, New Hampshire?

A. Yes.

Q. Did you at that time obtain financing from the Small Business Administration?

A. Yes.

Q. Are you still financed by the Small Business Administration to some extent?

A. Yes, we are.

Q. Do you render reports to the Small Business Administration?

A. Yes.

Q. Mr. Hendrix, what is the approximate volume of sales of the Hendrix Wire and Cable Corporation during the last fiscal year?

A. Well, our fiscal year ends May 31st and we had total sales volume of \$807,000.

[fol. 926] Q. What products are manufactured by the

Hendrix Wire and Cable Corporation?

A. We manufacture the spacers for our Hendrix aerial cable, space cable. We insulate conductors for that space cable. We do a limited amount of insulating for line wire and tree wire and service drop cable.

Q. What products are sold by the sales company?

A. All of the Hendrix Wire and Cable products are sold by the sales company in that area where they have sales representation.

Q. What is that area?

A. New York State, Pennsylvania, New Jersey, all of the six New England states and part of Maryland,

[fol. 927] Q. And does the Hendrix Wire and Cable Corporation sell its products in other areas?

A. Yes. We have sales agents in the outlying areas such as Ohio, Indiana, Michigan.

Q. These are sales agents not associated with the Hendrix Engineering Sales Corporation?

A. They are sales agents that have kindred products that they sell to the electric utility.

Q. Did you list the type of product sold by the sales corporation other than the products manufactured by the Hendrix Wire?

Q. No, I did not. We sell the standard products, switches and connections. We have a line of poles and crossarms, the Lincoln Pole and Wood Coating Company. And we have small accessories line for linemen, leather buckets and gloves and things of that nature.

Q. Does the sales corporation sell electrical conductor products other than the products manufactured by the wire

corporation?

A. Yes. We sell the Reynolds conductors.

Q. These are aluminum conductors?

A. Aluminum conductors. Both bare and covered.

Q. Mr. Hendrix, what is the principal product that you manufacture in terms of sales volume?

[fol. 928] A. Our specialty is the spacer cable.

Q. Would you state what a spacer cable is?

A. Spacer cable is an aerial cable which is supported by a strong member such as a copperweld steel messenger and three insulated conductors which are held attached to the messenger and are held separate from each other.

Q. How far apart are the insulated conductors in a spacer

type aerial conductor?

A. The most spacing is six inches, and the spacers, I

might add, are located 30 feet apart.

Q. So in simple terms these are three insulated conductors held approximately six inches apart by spacers which occur approximately at 30 foot intervals in the assembly?

A. Yes, sir.

Q. What is this product used for?

A. It is used for power distribution in the circuits.

Q. What type of customer buys it?

A. Electrical utilities.

Q. Is it used for transmission of electrical energy?

A. Transmission indicates a very high voltage, and it is not used for that.

Q. Then all space aerial cable must have insulated conductors?

[fol. 929] A. Yes, sir.

Q. Now, what conductor metals do you use in your spacer aerial cable?

A. We use both copper and aluminum.

Q. About what percentage of each is used in your total volume?

A. About 95 per cent aluminum, 5 per cent copper.

Q. Why is it that the proportion of aluminum is so much greater than that of copper?

A. Economy is a big reason. It is less expensive and has

less weight.

Q. If it is less expensive why is it that 5 per cent of your

business is still accounted for by copper?

A. There are some areas where corrosion is a problem, such as salt spray on the seashore, where the utility people prefer a copper conductor.

Q. Now, Mr. Hendrix, in the wire and cable business as a whole, are there today separate fields or areas in which

aluminum and copper conductors are used?

A. Yes, I would say that aluminum is properly used in overhead circuits.

Q. And where is copper used?

- A. And copper is used in inside wiring and underground circuits.
- Q. Now, with respect to the spacer aerial cable, which [fol. 930] is your principal product, who are your competitors today in the sale of that product?

A. We have a number of them.

Q. Could you state them?

- A. Yes. Rome and ALCOA, Kaiser, Anaconda, General Electric, General Cable, Olin Conductors and more recently, Reynolds, are into it now. They are taking over the same position that Roebling did have. Roebling was a competitor before they sold it.
  - Q. You said Rome and ALCOA. You mean-

A. (Interrupting) The combination, yes.

Q. The combination. Now, which of these companies, if any, manufacture the entire assembly for space aerial cable?

A. Rome, Kaiser and Anaconda, I believe manufacture their own design of spacer.

Q. And Hendrix also manufactures its own design?

A. Yes.

Q. Now, will the Reynolds Company manufacture the entire assembly?

A. I believe they plan to. I am not sure of that.

Q. What about the other companies, General Electric, General Cable and Olin?

A. They use spacers that are manufactured and sold to

[fol. 931] them by outside concerns.

- Q. Mr. Hendrix, are there today any independent companies which manufacture the entire cable assembly by themselves?
  - A. None other than ourselves.
  - Q. None other than Hendrix?
  - A. Yes.

Q. And is this product usually sold as a composite union?

A. Very often, yes. There are scattered sales where different parts are purchased from different companies.

Q. Have there ever been other independent manufacturers of this product who have manufactured the entire product?

A. Yes, Roebling.

Q. Any others?

A. Rome.

Q. Are they the only ones?

A. They are the only independents.

Q. When did Roebling enter the business?

A. Early '58 or late '57. I believe December, 1957 was the first time it was offered.

Q. When you say Hoebling, Mr. Hendrix, you are referring to the John A. Roebling Sons division of the Colorado Steel and Iron Company?

A. Yes.

[fol. 932] Q. And when did Rome enter this business, approximately,?

A. Approximately I believe, it was late '58 or early '59.

Q. Now, was ALCOA a manufacturer of this product prior to its acquisition of Rome?

A. No, sir.

Q. And was Reynolds a manufacturer of this product prior to its acquisition of Roebling?

A. No, sir.

Q. Mr. Hendrix, has the entry of integrated aluminum

companies in the field of spacer type aerial cable had any effect on your business?

A. Yes, sir. Pricewise.

Q. Now, specifically, has the acquisition of Rome by ALCOA had any effect?

A. I have noticed that the price is considerably less now

than it was before the acquisition.

Q. Could you give an example of the way this effect has worked out?

A. In April, 1959, Rome quoted a price of \$1,111 per thousand circuit feet for 18,600 circuit feet of 4015 K.B. aluminum cable. This was in Wallingford, Connecticut.

Q. This was on a particular job in Wallingford, Connecti-

cut?

[fol. 933] A. Yes. In which we were involved. In March-

Q. Excuse me, Mr. Hendrix, you bid on that job?

A. We bid on that job and lost it.

Q. All right, proceed. .

A. In 1961, March, the City of Norton, Kansas, there was an item of 22,000 feet of the identical construction. ALCOA's price was \$869.59 for 1,000 circuit feet.

Q. \$8691

A. Yes.

Q. Now, what is the—excuse me. Did Hendrix also bid on this 1961 job?

A. Yes, sir.

Q. What was your price?

A. Our price was \$1,007 per thousand circuit feet.

Q. What was the relation of the price you bid on that

1961 job to the cost of the product?

A. We had been asked to give the very best price we could by our agent in Kansas City, and this price we quoted him was actually under our cost figure, figuring in the fair overhead, manufacturer's cost.

Q. That is overhead and all including profit?

A. Not including profit. There was no profit at all.

Q. And what was the relation of the price bid by the [fol. 934] Rome division of ALCOA to the cost for that product?

Mr. Bergson: I object, your Honor. I don't see where that has any relation.

The Court: I don't know if I understand it.

Mr. Mahaffie: The question is what was the relation of the price bid by ALCOA-Rome to Mr. Hendrix' cost for the product. He says his cost was \$1,007, which would leave no profit.

The Court: Yes.

Mr. Mahaffie: I think the question is probably superfluous, your Honor, and I withdraw it. I simply wanted to show if it was above or below. I will withdraw the question. It is unnecessary.

Q. Mr. Hendrix, is this example that you gave typical of the trend in prices of spacer type aerial cable during the past four years?

A. Yes, sir. I might add that there were two other producers bid on that same job in Kansas City, Norton, Kansas, and they were both underneath the ALCOA price.

Q. And this was the 1961 job?

A. Yes.

Q. And who were those producers? [fol. 935] A. Kaiser and Anaconda.

Q. Mr. Hendrix, in what form do you buy aluminum for use as a conductor?

A. We buy a stranded conductor.

Q. That is stranded aluminum wire?

A. Yes.

Q. Who are your suppliers?

A. Suppliers are Reynolds, Alcoa and Olin Conductors.

Q. Have you ever bought aluminum from Canadian sources!

A. No, sir.

Q. Have you ever bought aluminum on the foreign market?

A. No, sir.

Q. Why not?

A. Just haven't considered 4t. Not having been approached by any of them on a price basis and not having gone after them to see if I could better the price.

Q. Has the price of aluminum strand, that is the stranded aluminum wire to you changed proportionately with the price of your finished products during the past four years?

A. No. sir.

Q. It has not?

A. It has not.

Q. What has been the general trend in price of aluminum [fol. 936] strand?

A. In the past four years I believe the price has been down, as a general trend. There has been about a 2 cent drop in the base price of aluminum and the strand has come down pretty much in accordance with that drop.

Q. The strand has come down, too, from what you said, but I believe it has not come down as sharply or as drasti-

cally with the finished product.

A. Yes. In connection with our spacer aerial, that is correct.

Q. Has the diminished spread between the cost of strand to you and the cost that you get for finished cable had any effect on your utilization of your manufacturing facilities?

A. Yes. Of course, in fear of considerable business producers lower prices and then we were practically alone in the field, because we were the only ones manufacturing them those years. We would have certainly enjoyed a greater volume, had a profitable business, were it not for this competition.

Q. Has it meant that at times you have had to take ma-

chinery out of production?

A. Oh, yes, our machinery has been idle now, well, I would say perhaps two-thirds of the time.

[fol. 937] Q. Has the diminishing spread had any effect on your profits?

A. Yes, our profits have gone down.

Q. Can you state what your profits have been during the past three years?

A. Yes.

Q. Let's say since 1958, your fiscal year 1958.

A. 1958 our total sales was \$471,951. Our net profit before taxes was \$20,038.

Q. How about 1959?

A. '59 we had \$10,000 worth of business. Our net profit was \$1,076.

Q. How about 1960?

A. 1960 our sales volume was \$708,000, and we had a net profit before taxes of \$17,558.

Q. And in '61?

A. 1961 we had \$807,000 worth of sales, and we had a net loss of \$31,856.

Q. Now, are there any, well, in the 1961 figure, Mr. Hendrix, were there any non-recurring expenses?

A. Yes. There were legal fees in there of approximately

\$25,000, which will be non-recurring.

Q. So if the non-recurring expense figures were not included—

A. Our loss would be approximately \$6,000.

[fol. 938] Q. Now, Mr. Hendrix, with respect to products other than spacer type cable, incidentally, sir, the profit figure you stated were the profits for the Hendrix Wire and Cable Corporation?

A. Right.

Q. And that includes any other products manufactured by that corporation?

A. Right.

Q. I believe you stated earlier the principal product manufactured by the corporation was the spacer type aerial cable?

A. Yes.

Q. With respect to products other than spacer type aerial cable you stated that you had manufactured aluminum line wire and aluminum service drop cable, is that correct?

A. Yes.

Q. Very much of those products?

A. Very little.

Q. Do you make as much of those products as you could make with the facilities that you have?

A. No, we could make much more.

Q. Why don't you?

A. Well, we can buy the finished product at less than we can produce it.

[fol. 939] · Q. Do you buy it?

A. We buy it and resell service drop and line wire, from Reynolds Metal Company.

Q. And you resell it as a distributor from the Reynolds Metal Company?

A. Yes.

Q. Have you considered integrating your operation farther back into the fabrication of metal? A. No. We have not, other than just to think about it.

Q. Why not? Would this not improve your position?

A. Perhaps it would, if we could work with the pig and have a little pread between the pig and the stranded conductor.

Q. Do you know what it cost to integrate back to a point

where you could produce aluminum rod?

A. Just for our small volume that we have there, I would roughly indicate that factory facilities, with your space and machinery installed, would roughly be three-quarters of a million dollars.

Mr. Mahaffie: That is all.

#### Cross-examination

### By Mr. Bergson: D

Q. Mr. Hendrix; as I gather your testin ony, your business is primarily in applying the insulation?

A. Yes.

[fol. 940]. Q. To wire and cable products?

A. Yes.

Q. And you have no equipment for drawing, stranding, cabling?

A. No, sir.

Q. And your principal product was this spacer type cable?

A. Yes, sir.

Q. And when did you start making that cable?

A. In 1951.

Q. In 1951. And how long were you the sole manufacturer of that cable?

A. Until Roebling came into the picture in late '57 or early '58.

Q. So for seven years you were the sole supplier of that type of cable?

A. Yes, sir.

Q. Now, how did you establish your prices in that time?

How did you go about making your list price?

A. Our first price was roughly established at about half of what aerial cable was selling for in other designs. That is how we started out.

Q. Was there any relation between cost or production,

overflead and so forth, or did you just-you were the sole supplier?

[fol. 941] A. Sole supplier.

Q. So you had no competition to help you fix the price? or establish the price?

A. No, sir. And had yery little business either.

• Q. And then you said that you went along from '51 to '57, and then competition came in; right?

A. Yes.

Q. And when came in who was the competitor?

A. Roebling. The first one.

Q. Now, by Roebling's entry into the field, did that baye any effect upon the price?

A. Yes.

Q. What happened?

A. They began to steal business away on the price basis:

Or win business away.

Q. Well, I don't represent Roebling and you can say what you want. So that the position in which you find yourself today is because the field that you formerly occupied yourself is now occupied by competitors and you are having to compete for business?

A. That is true.

Q. And you would like to have it the other way around?

A. It was much more profitable, of course.

Q. Now, does anybody else manufacture these spacers [fol. 942] that you talk about, other than wire and cable manufacturers?

A. Yes.

Q. Who manufactures them?

A. There is an outfit in Cleveland called the PLM Company. Fargo Division of Line Material, manufactures spacer, porcelain spacers. I believe there is a moulding concern called the Park Plastic in New Jersey that manufacturers a spacer. Those are the only three that I know of.

Q. Isn't it a fact that most utility companies instead of buying your pre-assembled cable, buy regular line wire plus spacers and assemble their own spacer cable?

A. Regular wire, they buy conductors to their own speci-

fications.

Q. A covered line wire?

A. Yes. Be

Q. And assemble it themselves!

A. Yes. 'As a matter of fact, it is all assembled in the

field. It always has been.

Q. So that the difference is that you offer a full package and the other spacer manufacturers are unable to offer a full package that offers the spacer and the utility company [fol. 943] buys the spacer from him and the wire from the cable company?

A. Yes. However, their merchandising procedure in the early days was to sell a spacer to the wire and cable company

and let him again resell it to the utilities.

Q. Were these wire and cable companies included in the list of competitors that you mentioned?

A. Yes, sir.

Q. Were there any others?

A. There could have been. I believe that Okonite got into it. I don't know of any others offhand that we have actually been in competition with.

Q. Now, can you use your covering or insulating machine

to cover either copper or aluminum?

A. Yes.

Q. Interchangeably?

A. Interchangeably.

Q. And do you do so?

A. We do.

Q. And if you were to integrate backwards, as Mr. Mahaffie suggested, the first step would be to get your own stranding equipment?

A. Well, I wouldn't go into stranding unless I went into

wire drawing, too.

[fol. 944] Q. And wire drawing. Now, how much would it cost you to buy enough equipment to put in a single strander and single drawer?

A. There again one drawer would certainly take care of

more than a single strander in volume.

Q. I am just asking you one strander and one drawer.

A. I am not familiar with it.

Q. And would it be anything like the \$750,000?

A. That including building facilities and so forth, which we wouldn't have to build. Actually the machinery installed, I would estimate, and this is a very rough estimate and I have not solicited specifically prices with anybody, I think

the cost would be in the neighborhood of a quarter of a

million dollars for the installed machinery.

Q. Now, in your direct examination you referred to two projects in which you cited a figure bid by Rome Cable in 1959 and the figure bid by Rome Cable in 1961. Were the insulating materials on these two projects comparable?

A. They were named exactly the same high molecular.

weight polyethylene outdoor group.

Q. Both polyethylene?

A. Yes.

Q. What did you bid in 1959?

[fol. 945] A. We had a bid and a different construction. It was 135 mills thickness of the same polyethylene plus 15 mills of a heated irrathene which we were recommending in furnishing for \$15,000, and the other was 14,000, which was a different construction, so it can't be compared to the Rome price.

Q. What were you offering in 1961?

A. We bid on the identical construction with the Rome

Construction. That was specified.

Q. I see. Now, when you buy your wife and cable products, which you subsequently insulate in your factory, do you get a special insulator's price?

A. Yes, sir.

Q. And is that special insulator's price lower than the list price for the wire and cable?

A. Yes.

Q. Have you bought any from Rome Cable?

A. Alcoa.

Q. Alcoa Rome?

A. Yes.

Q. Did you get that special insulator's price from them?

A. 5 per cent.

Q. Thank you.

#### [fol. 946] Redirect examination.

#### By Mr. Mahaffie:

Q. Mr. Hendrix, in cross-examination you stated that you had this spacer aerial cable field all by yourself until a proximately 1957 or 1958. Now, you told me on direct examination that in 1957 and 1958, both the Roebling Company

and the Rome Company entered into this business, is that correct, sir?

A. Yes.

Q. Now, during the period just after the entry of Rome and Roebling, that is period roughly the year 1958, you competed with these two companies?

A. Yes, sir.

Q. On sales of these products?

A. Yes, sir.

Q. Did your competition with Rome and Roebling at that time, at any time, force you to enter a bid below your cost?

A. No. sir.

Q. Were you able to obtain a reasonable share of the business even competing with these two corporations?

A. I believe so.

Q. Now, one further question, sir. When a utility buys insulated wire and then buys a spacer from—I believe you [fol. 947] mentioned three manufacturers of spacers, to put it together—is the insulated wire the same product as the utility would buy to use as line wire?

A. No, sir, not to my knowledge.

Q. What would this be?

A. Usually a better grade of insulating material and heavier wall thickness, depending on voltage use.

Q. I see. Thank you, sir.

Recross-examination.

# By Mr. Bergson:

Q. I have just one further question. When did Anaconda and Kaiser come into this business?\*

A. I believe Kaiser was next with their own spacer, and Anaconda last, and I think Anaconda got into it early 1960. If I remember right, it was in 1959 when Kaiser got their spacer on the market.

Q. Anaconda and Kaiser were both lower than ALCOA-Rome in this business you cited in 1961?

A. Yes, sir.

Q. Thank you.

Mr. Mahaffie: No further questions.

The Court: We will take a short recess.

(Whereupon, at 3:35 p. m. a short recess was taken after which the trial was resumed.)

[fol. 948] HARRY RESNICK, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

#### Direct examination.

### By Mr. Melchior:

Q. Would you state your full name and place of employment?

As Harry Resnick, President and General Manager of the Channel Master Corporation, Ellenville, New York.

Q. How long have you held this position as president, Mr. Resnick?

A. About twelve years.

Q. When was Channel Master Corporation founded?

A. About twelve and a half years ago.

Q. And what line of products does it produce?

A. We have three major avenues, aluminum, TV antennas, and importation of radios.

.Q. What do you mean by "aluminum"?

A. Well, we are in the aluminum business. We buy aluminum on the world market, and we make billets, sell billets. We have two extrusion presses, one which has just gone into operation. We extrude rigid conduit. We extrude tubing which is known as broom, and then we draw that for finished tubing, and we sell that to manufacturers, such as people [fol. 949] who make gliders, summer furniture, anyone that has an application for what we would call drawn aluminum tubing.

Q. Can you state approximately what percentage of your total investment is in the aluminum and aluminum product field?

A. I would say roughly 75 per cent, but capital equipmentwise, that would be more, because it might be more floor space given up to the antenna division than to the aluminum division. But machinerywise it is in the aluminum division's favor. Q. You stated you manufacture or fabricated aluminum conduits.

A. TER

Q. Do you manufacture rigid aluminum conduit?

A. Yes.

Q. In what sizes?

A. We make everything except six inch..

Q. What does "everything" include?

A. Half inch through five inches. We do not manufacture accessories such as couplings and elbows.

Q. Do you manufacture EMT aluminum conduit?

A. Yes, we do.

- Q. Now, are you generally familiar with the manufacture and sale of rigid and EMT aluminum conduit?

  [fol. 950] A. Yes.
- Q. What is the raw material that you use in the production of aluminum conduit?
  - A. The raw material is aluminum.

Q. In what form?

A. Well, ours comes in the form of pig, or ingot, as it is known.

Q. You convert the pig or ingot into what form?

- A. Into billets, and we convert it into extruded pipe and then we thread it, coat it, inside coating, and mark it.
  - Q. When did you first begin to extrude aluminum pipe?

A. About two years. +1960.

Q. Do you have an extrusion press?

A. Yes.

Q. Can you give me an idea of what the investment was required in order to gather these facilities together in order

to extrude aluminum pipe?

A. Well, we installed our first extrusion press in 1953, and we were only in the drawn tubing, and like other growth industries, we couldn't take up the capacity. We were looking for capacity. So we looked around to see what would be suitable for our facilities and this item we came up with was aluminum conduit. We feel it has a vast potential in [fol. 950a] this area. We know of all the pioneering work Kaiser has done in this area, and we went into it, and in investigating we found our equipment was not sufficient to be an economical producer, so we had to invest about three-quarters of a million dollars to buy a new 3,000 ton extru-

sion press, which we installed—oh, about, I would say, it is in operation two months now.

[fol. 951] Q. I see.

A. And during this investigation we also looked at the threading equipment, and we bought a machine such as the other witnesses spoke about, this double end threader, but we were offered a machine that cost maybe three hundred thousand that this company was making for Alcoa prototype, the automatic putting on of couplings and the end caps would be just about untouched by human hands, but the three hundred thousand was too rich for us.

Q. Can you give me an approximation of your company's annual sales?

A. About thirty-three million dollars.

- Q. And can you indicate what share of this is in aluminum conduit?
  - A. Well we in aluminum conduit, we did a million three.
  - Q. In which year?

A. 1961.

. Q. How about in EMT?

A. Very minor. It is a very little market for us. Maybe fifty, sixty thousand.

Q. How about the year 1960, do you recall what your approximate sales were in aluminum rigid conduit in that year?

A. No. But I think we have a letter—I don't recall the numbers off hand.

Q. You don't recall? .

[fol. 952] A. It was just starting off, Very minor.

Q. You began production in that year?

A. Yes.

Q. I believe you stated that you did not manufacture accessories for aluminum conduit?

A. That's right.

Q. You purchase them?

A. That is correct.

Q. Do you purchase them for resale!

A. Yes. We also re-sell.

Q. When you sell this do you sell this in conjunction with aluminum conduit?

A. Well it is more of a—well we tried to stay out of the marketing of the couplings and elbows but some of our distributors—well we don't have distributors—we have dis-

tributors—I have to clarify this—we sell through manufacturers' reps. We call these stocking manufacturers' reps and they insisted that we supply these products also.

Q. I take it this is not a very high profit line?

A. No, it is not a high profit line.

Q. This is a convenience item that you carry?

A. Yes.

Q. For the benefit of your customers?

A. Yes.

[fol. 953] Q. Now who are your most significant com-

petitors in the field of rigid aluminum conduit?

A. Well I break the industry down as the three majors and the three minors. The three majors being Alcoa, Kaiser and Reynolds. The three minors being—no offense—Harvey, Anaconda and Ormet or Olin. There is a joint venture known as Ormet. I don't know what name is actually under the primary production. I think Ormet is the primary producer.

Q. O-r-m-e-t?

A. Yes.

Q. Now do you compete with Alcoa in this line?

A. Yes. We have a general production line. Our other aluminum is in competition to Alcoa also. Our tubing. Our mill production end of the business is also in competition with Alcoa, and the maintenance.

Q. I was directing my attention to the aluminum conduit line that you have—you are in competition with Alcoa?

A. Yes. We have other competitors now—independents. We had more but a few dropped out. We have Jasco down on Long Island. We have—

Q. Is Triangle a competitor of your's?

A. Not in aluminum as such.

Q. Not in aluminum as such?

A. Not that I know now. If they are competitors they are a secondary, where they buy their pipe from somebody. [fol. 954] They don't have their own extrusion facilities and without extrusion facilities I don't believe you can be in the rigid conduit business.

Q. Is Hazelwood a competitor of your's?

A. Yes, Hazelwood is. He has his facilities.

Q. Now you mentioned EMT. You said you manufactured that, I believe,

A. Yes. This was manufactured during the steel strike of

I believe two years ago, and we sold quite a considerable amount of pounds, and this was when we couldn't get steel. They used aluminum. And we sell some for export now.

- Q. Who was your significant competitors in this field?
- A. I think we only had one, and that was Alcoa.
- Q. Alcoa?
- A. Yes.
- Q. Now to what extent do you meet competition of steel conduit manufacturers?

A. As far—it is a mixed picture out in the market place. Take a city like New York City. I would say steel has become less and less of a factor and I would say 70 percent of the volume has gone to aluminum. So we don't even take steel into consideration. Take a market such as Miami, which is also one of fifty to sixty percent aluminum. So I think as far as our company outlook the battle has been [fol. 955] won for aluminum's rightful place in the market-place. Kaiser did a very good job in exposing this material and went ahead and most of the distributors are the electrical user who is the electrical contractor. In the New York area I would say 70 percent of them require it.

Q. I don't understand your last statement, Mr. Resnick.

A. In New York City where there is a lot of construction going on at the moment—in other words, as far as I know we are competing and bidding against other aluminum companies not as against steel as such. Although aluminum is two percent less than steel is now anyway.

- Q. You mean in price?
- A. Pricewise.

Q. Would you have a way of knowing what is going into the New York market at the present time on various construction jobs, whether it is steel going in or aluminum! Would you have any way of knowing!

A. This is by the jobs that we do get and the jobs that we do not get. We think it is by—and it is being in business and you get to know these things, and by your man reporting back, we would estimate it is about 65 to 70 percent aluminum.

- Q. Aluminum conduit?
- A. Conduit.

[fol. 956] Q. As opposed to-

A. (Interrupting) Other materials. We lost a very in-

teresting job the other day to concrete underground work. Aluminum lost it to concrete. So there is other conduits other than steel. There is plastic conduit—a special application. But this is not a big share of the market.

Q. What type of conduit is generally used above ground

and in buildings?

A: Aluminum or steel.

Q. Aluminum or steel. Where is concrete generally used?

A. Underground.

Q. Underground. Where is plastic generally used?

A. Sometimes—I am not too familiar with the plastic. I know this particular instance we lost a nice job to concrete.

Q. But this is underground?

A. Underground.

The Court: When you say you lost it to concrete, is that

the name of a company?

The Witness: No. That is the type of conduit, it is made up of. Like our gas lines in the city that go underground. Pre-cast concrete pipe.

Q. What sort of distribution set up do you have, Mr.

Resnick, for aluminum conduit?

A. Well this is our second go around. We tried the approach of having our mill salesmen sell-to the distributors [fol. 957] directly. But we found we didn't have enough weight and couldn't travel this man. No, we didn't have enough weight. By that I mean other production lines such as wire and cable and so on and soforth. Then we had to go to what I call stocking reps or agents, as they are sometimes called. These are independent business man who own a warehouse and will charge a certain percentage for selling and a certain percentage for stocking the material in these warehouses. And they sell to distributors. We are financially responsible for this material. And we have 19 such stocking warehouses. And this is-looking at our competition, the most successful ones have done this. Kaiser, Rome, they have. They own their own such set up. We said we can't own our own and we will do the next best thing. We will go out and get representatives.

[fol. 958] Q. And you have these manufacturers' representatives—is that the proper term?

A. Yes. Well, stocking "reps' is the-

Q. Stocking reps!

A. Yes.

Q. You have 19 of these?

A. Yes.

Q. Where are they located generally?

A. I'd say throughout the country.

Q. Now, have there been many difficulties involved in set-

ting up this distribution organization?

A. Yes, we have been working on it for a full year. We should have 50 locations to serve the nation and we have only come up with 19, and unfortunately one of these went bankrupt in Pittsburgh the other day. It is a very competitive sort of thing.

Q. I take it you are still trying to build it up then, is that it?

A. Yes.

Q. Now, you mentioned TV antennas. Do you distribute these on a nationwide basis?

A. Yes.

[fol. 959] Q. Do you have a national distribution organization for the distribution of TV antennas?

A. No. We have our own salesmen that report directly to a sales manager—that is, direct factory men.

Q. You have your own safesmen doing this?

A. About twenty-five of them, traveling and living in the territory. They are on our payroll as opposed to the stocking reps, who are not on our payroll.

Q. I see. Now, you also make other mill products, don't

you?

A. Yes.

Q. Do you distribute these nationally also?

A. Well, yes. Yes.

Q. Well, now, do you have a sales organization distributing these?

A. Well, we have direct factory men selling these products. We have exactly two of them traveling the country selling mill products.

Q. Couldn't you use these already established sales organizations to sell aluminum conduit?

A. We tried it with the mill salesmen and we failed. And the advantage we get of stocking rep—he might have other [fol. 960] gear or other materials that a distributor might

want on the spot for immediate service, so he ties in a little of our conduit into it, or cable, or all the hundreds of items that go into the selling of an electrical distributor.

Q. Now, did you say that Alcoa-Rome was one of your

competitors in the aluminum conduit field?

A. Well, I would think that Rome would be a bigger threat to me than Alcoa.

Mr. Bergson: That wasn't what he asked. He asked if it was a competitor.

The Witness: What was that?

Mr. Bergson: The question was whether Alcoa-Rome was a competitor.

The Witness: Yes.

Q. It is a competitor of yours?

A. Yes.

Q. Throughout your entire organization?

· A. No, not in radios or antennas, just the aluminum division.

Q. Aluminum conduit. That's the only field I am asking you about. Aluminum conduit.

A. Well, yes.

[fol. 961] Q. Are you generally familiar with Alcoa's or Rome's marketing organization?

A. Yes.

Q. To what extent are you familiar with it? Do you know the location of their warehouses and sales offices, if they have them?

A. Well, I don't know the exact locations of the ware-houses, but they have warehouses in strategic locations, which we are trying to do. I know the exact number of some of the others. I know Triangle has 22.

Q. I am asking you about Alcoa-Rome.

A. No, I don't know specifically the number of locations, no.

Q. Do you know that Alcoa-Rome in the aluminum conduit field does have warehouses?

A. Yes, they sell, through the Rome division. I know they sell the material through the Rome division.

Q. Do you know whether they have warehouses?

A. Yes, they have stocking warehouses.

Q. Do they sell through stocking reps as you call them?

A. I don't think so.

[fol. 962] Q. How do they sell?

A. As we sell our antennas, they sell. Their own men.

Q. You prefer going to stocking reps to meet the competition of Rome-Alcoa through Rome's sales organization?

A. Yes, but they have an overhead in doing this also. It costs me a percentage to do this and I assume it costs Rome and Alcoa the same overhead.

Q. Well, I was really trying to find out if you are familiar with Rome's sales organization, and I'm not sure whether you say you are or are not.

A. Yes.

Q. You are?

A. Yes.

Q. Is your sales organization of the same caliber as theirs?

A. No.

Q. How long have you been building one?

A. Well, a year.

Q. How long will it be before yours is of their caliber?

A. Well, it is hard to say. We work very hard, and— [fol. 963] maybe two or three years we will—we can never be in that caliber because we don't have the cable to go with it. We have to take second choice in the marketplace.

Q. Do they sell more than aluminum conduit through

their sales organization?

A. What was that?

Q. Do they sell, products other than aluminum conduit through their sales organization?

A. Cables, conductors, the general makeup of the factory

output.

Q. Now, how long have you been in the aluminum business, Mr. Resnick

A. 1953 as a producer.

Q. As a producer, And how long have you been in the aluminum conduit field?

A. Two years. .

Q. From your own knowledge of the aluminum conduitindustry, where do you think or could you estimate for me where you think the market for aluminum conduit may be in the future? A. Well, we just made a substantial investment, based on our opinion that this is a growing market, and it is my own [fol. 964] personal opinion that 90 percent of this material is going to be aluminum within five years. Now there has been too much investment by major manufacturers to go any other way.

Q. Mr. Resnick, do you consign aluminum conduit to any

of your customers?

A. No, we don't have the financing to consign.

Q. What do you mean by that?

A. Well, we don't consign to the distributors. We stock in the warehouse but we do not consign any merchandise. I think it is a bad business policy, first of all. It's a costly one at that.

Q. Do any of your competitors in aluminum conduit consign their stock?

A. Yes. The ones that are the primary producers consign, and all the product that I know that are sold, this aluminum conduit seems to be the only one that consignment came in. Whether this is a carry-over from the steel people, I don't know.

Q. Well, how do you compete with these competitors of yours who do consign?

A. Three and a half percent discount will take care of [fol. 965] the consignment.

Q. You give a three and a half percent discount?

A. Yes. In lieu of.

Q. In lieu of consigning the goods?

A. Yes. That has been the practice and it has worked into the price list somehow now.

Q. Do you have a published price list for aluminum conduit?

A. We have a published starting price list. It happens to be true.

Q. Will you explain what you mean by published starting price list?

A. Basically, we sell from the published price list. And then, on these bigger jobs it seems—I don't know, the word "bid" was used before—it isn't bid—I guess the term is "put your best price on the table and we will see." Stuff like that. Negotiate from the price list. And finally you do bid, or tender an offer for these jobs, and this gets very

involved, and an independent company such as ours has not one such of these bids.

Q. What has been the general trend of the market price of aluminum conduit since you came into the business in

[fol. 966] 1960, if you know?

A. Well, I don't think there is any dispute that this price went down substantially. I don't have the exact percentages, but I know it has gone down 15 to 20 percent. In that area.

Q. Have your prices generally declined that amount?

A. Yes.

Q. Now, are you familiar with the market price of ingot?

A. Yes.

Q. Do you know what, if any, change has taken place in

the price of ingot over the last several years?

A. Well, as was pointed out here this afternoon, there was a tendency for it to go up there for a while, but basically it went down and fluctuated from 26 to 24. That is now, I would say.

Q. What is the price today, do you know?

A. 24. Once again, there has been a drop in the world price of aluminum, just as we rode up here yesterday, world prices went down three-quarters of a cent, and we don't know how it is going to affect—

[fol. 967] Q. Well, did domestic prices go down too!

A. Well, no, not to my knowledge. This might happen in a week or ten days and it might not even happen; I don't know.

Q. How do you know the world price went down?

A. It is published. There are two prices of aluminum. The domestic price, which is 24 cents a pound, and there is a world price at 22½ cents a pound today, so assuming that the American producer sold in Europe, he would sell that material at 22½ cents. If he could get 22½ cents. Or in this market he would sell it at 24 cents a pound. This happened yesterday.

Q. Well, now, from your knowledge of the price changes in the field of ingot since 1960, have the prices of ingot on a percentage basis gone down to a greater or lesser extent than in the case of aluminum rigid conduit?

A. I don't recall at any time that the price of rigid moved with pig. Basically, at the beginning when there was sharp

reduction, it moved with what steel did. In other words, our raw material and our selling price had no relationship to one another during these ups and downs.

[fol. 968] Q. I am not sure of what you are telling me.

Are you telling me-

A. In other words, pig could have went up and rigid could have went down within ten days, or vice versa. One has nothing to do with the other.

Q. Well, which way did pig go since 1960?

A. The final result is that pig is 24 cents, which is about two cents off the highest price it has ever been, and rigid conduit is about 20 percent off the highest price it has been.

Q. I,see. Now, are you aware that Rome was acquired by

Alcoa in 1959?

A. Yes.

Q. Now, has this merger had any effect on your business, to your knowledge?

A. Yes.

Q. Would you state what effect it has had?

A. Well, it tends to look at Rome in a different perspective. Now they have two selling organizations rather than one. Alcoa, who we had been competing with since 1953, is one organization. Now Rome, who basically could not be in this business without their own extrusion facilities and compete, they be got this free. And there is two—I got a free [fol. 969] competitor, actually, and this tends to press prices.

Q. I'm not sure what you mean by "free competitor."

A. They got in it by virtue of Alcoa having this material. They just transferred it over to Rome to do the selling. Got two selling organizations.

Q. Are you telling me that as a result of this merger they have an added competitive advantage?

A. Yes.

[fol. 970] Q. And they have a competitive advantage over you by virtue of the merger?

A. Yes.

The Court: Sustained. Don't use the word "advantage". Let him describe what it is. You put it in your question and that doesn't establish any proof whatever.

The Witness: Just to explain myself, we sell against

Alcoa and it has a fine reputation and is a big company. And every company likes to sell all their products possible. When they get into a big building program and they sell elbows and couplings and so on and they are selling rigid, and that is what they are selling. One instance, the Pan American Building, Alcoa's reciprocity cost me half a million dollars in fees—

Q. Reciprocity with whom?

Mr. Bergson: I object, Your Honor.

A. Alcoa and the landlords.

The Court: Just a minute. Let's see if we can't get down to something. I don't mind you going on but what the question is, and I think it needs some clearing up, is that by this merger you felt that you were—if-I understand you right, and correct me if I am wrong—you felt that you were met [fol. 971] by two sales forces instead of one. Is that what you mean?

The Witness: Yes. Yes.

The Court: So that you felt that by the Alcoa, by the merger, you had an additional competitor?

The Witness: Yes. O.K. Now let me-

The Court: Now, Mr. Resnick, just take it a slower.

The Witness: All right. Let me see if I could explain it.

The Court: Just listen to me a minute. Rome had a sales force before the merger?

The Witness: Yes.

The Court: And Alcoa had its sales force before the merger?

The Witness: Yes,

The Court: So that I suppose there were two sales forces?

The Witness: Yes.

The Court: Now I think it requires some explanation. You say that the merger gave you two sales forces. Still you had those two before the merger.

[fol. 972] The Witness: Yes. But Rome could never be a factor in the aluminum business, in aluminum conduit as Rome is today unless they were acquired by Alcoa, because they had to have the facilities to compete. And I would like to know, and I don't know if it is feasible for me,—I don't know of any rigid aluminum that Rome sold, any aluminum,

before the merger. They were not in this business. Alcoa was always in it. Now there are two groups of men selling. Alcoa is selling its quantities and Rome has its boys out.

The Court: This is what confuses me. I don't understand it either. I didn't understand that Rome sold aluminum

before the merger.

The Witness: That's right. But as a company grows in stature and growth they acquire friends and have done favors in the past, on shortages. So Rome can say "Remember during Korea I gave you copper that was so hard to come by and do me a favor and b-y from me", and all that stuff.

The Court: Oh yes. I understand that.

The Witness: So I have two sets of people out in this fashion.

Mr. Bergson: I don't think this is testimony. This is [fol. 973] fantasy.

The Court: I think that you better get on. Frankly I don't quite understand—maybe the witness could explain it—I don't quite understand his explanation of the effect. Let's get it to this, Mr. Resnick, I think the question was, in substance, what was the effect of this merger between Alcoa and Rome upon your business? I think that is the question.

The Witness: O.K. Point blank they had a five year jump on me. They got a completely thoroughly trained organization in selling electrical distributors. Point blank. No ifs, ands or buts about it.

The Court: The question is how did it affect you?

The Witness: I can't get the best distributors. They are tied in with Rome. Rome has advantages. Rome has fifty years of name. Rome is a fine company and through the years it has treated its customers very good. I don't think you can hear anybody say a bad word against them. I don't know. I have not heard any. Then they get themselves immediately behind their selling of Alcoa—of aluminum [fol. 974] wires. Whereas I have to start from scratch. Run to the city. Find a stocking rep and then start digging. This I would say is a definite advantage. If I could afford to buy a company such as this, this is the thing to do. This is what you call buying a market, or buying a business.

Mr. Melchior: No further questions.

The Court: Is that the answer? All right.

#### Cross-examination.

### By Mr. Bergson:

- Q. Mr. Resnick do you know when the Rome-Alcoa merger took place?
  - A. Roughly,

Q. When?

A. Couple of years:

Q. It was April 1st, 1959.

A. All right.

- Q. Were you in the aluminum conduit business at that time?
  - A. Well if we didn't-

The Court: No. Were you?

Q. Were you in the aluminum conduit business-

A. Yes,

Q. (Continuing)—at that time? [fol. 975] A. Yes.

Q. So you testified incorrectly when you told Mr. Melchior that you went into the aluminum conduit business in 1960?

A. We started producing. It takes a year to find equipment and get it set up. I certainly don't want to mix any words or mislead anybody but it takes time in preparing.

The Court: Yes. We all understand those things. Just take it slow. Mr. Resnick.

The Witness: All right.

The Court: And get the question before you answer it.

The Witness: Right. All right.

The Court: So we won't get these dates confused.

# By Mr. Bergson:

Q. Let me put it simply: Were you selling conduit-

A. (Interrupting) No.

Q. (Continuing)-prior to the Rome-Alcoa merger?

A. I don't believe so.

Q. So that when you did get into the market the merger had already taken place?

A. Yes.

[fol. 976] Q. Now you mentioned that the price of conduit has gone down 15 to 20 percent in the last couple of

years. And also you stated that you think that aluminum in certain areas anyway is taking over from steel. Do you think that that price decline in aluminum conduit has anything to do with the fact that aluminum is taking over from steel?

A. Yes.

- Q. And you predict that in the next five years or so that aluminum will take over from steel?
  - A. I would. This is my firm opinion.
- Q. What do you think the steel conduit manufacturers are going to do in the meantime! Do you think that they are going to sit back and take this!

A. Why did they leave New York and take 70 percent of

the market now.

Q. They are competing, aren't they?

A. I can't answer the question.

Q. You talked about the promotional efforts of Kaiser in getting aluminum into the market. Wasn't the greatest promotional tool that they used the consignment method?

A. I don't know if this was a good tool. I think it hindered in the early days. I think people who have no money in something tend to feel, well if it will sell it will sell. But when he gets hurt in cash then is when he will undertake to sell.

[fol. 977] Q. In order to compete with steel and get wide distribution, didn't Kaiser have to place its conduit on a consignment basis!

A. I would say "no". Otherwise we could have sold Point 1. Because we didn't consign Point 1.

Q. But we are talking about the growth and existence of aluminum.

A. This only happened in the last two years.

Q. And when did Kaiser go on consignment basis?

A. In that period of time.

Q. And Kaiser was the first to go on this consignment basis?

A. I think this is correct.

Q. And while you have not had the financial ability to place your conduit on consignment, haven't you reaped some of the benefit of the popularity which has been given to aluminum conduit by Kaiser and Alcoa and Reynolds going into consignment, putting aluminum on consignment?

A. Just as I reaped benefit from my aluminum operation. I started very small in aluminum operation and I feel our share of the aluminum business did not grow, of the rigid conduit in what the market is out there. I would say "no, I did not share as much."

[fol. 978] Q. You didn't share as much?

A. Yes.

Q. Because you didn't join in doing it.

A. I joined. I had to save 3½ percent in lieu of consignment.

Q. Have you made any money on your conduit operations?

A. In the broad sense, yes.

Q. You said you market your conduit all over the country. Now do you sell on the West coast?

A. Yes.

Q. How do you ship your conduit to the West coast?

A. Railroad car. Carload.

Q. Carload?

A. Yes.

Q. Are you able to sell any on the West Coast?

A. Yes.

Q. Were you able to sell any in the—strike that. Do you know whether the manufacturers of steel conduit are making any efforts to reduce the gauge of steel?

A. I don't think it would make any difference because of the code. It makes no difference—it doesn't make any sense because we could reduce the gauge of aluminum. It is still the same ratio.

Q. You could reduce the range of aluminum and still be [fol. 979] safe?

A. As safe as steel.

Q. Is aluminum as hard a metal as steel?

A. I had a funny experience. We made the first three sizes in a drawing method which was as hard as steel and our stocking reps are crying the blues. They say if we are buying aluminum we want it to act as aluminum. Now we are down to only drawing two sizes and I have to tool up to extrude like the rest of the industry.

Q. Do you sell a substantial portion of your conduit in the New York market?

A. Percentage wise, no.

Q. When you sell on the New York market do you sell

direct to the contractor!

A. No. But our man is always there. There seems to be always a huddle. The architect, the contractor, the landlord and God knows who else.

Q. Do you sell through a distributor?

A. Yes. All our sales are made through our agents who

sell through our distributors.

Q. Just one question, Mr. Resmick. You spoke of competing against two sales organizations—Alcoa and Rome. Do you know that for a fact?

A. Yes.

[fol. 980] Q. How do you know?

A. Well-take the Pan American building.

Q. No.

A. Well you asked me the question. I have to answer it.

Q. All right.

A. I know Alcoa wasn't there and I know reciprocity talks with the power companies who are some of the bigger users of power in this country—

Mr. Bergson: I think the answer is entirely unresponsive.

I ask it be stricken.

The Court: We are talking about the sales organizations of Alcoa and Rome.

The Witness: But I must answer this question.

The Court: No you mustn't. You won't do any such thing.

The Witness: All right. First I know-

The Court: Now wait a minute please, Mr. Resnick.

The Witness: O.K.

The Court: I think that you left the impression and all they are trying to do is clear it up, that since the merger there are two separate distinct sales organizations. I don't know whether you intended to mean that or not.

[fol. 981] The Witness: No, this is not.

The Court: Well if you pay attention, that is what counsel is trying to clear up.

The Witness: O.K. There is not that as such.

Mr. Bergson: Thank you. That is all.

The Witness: All right.

The Court: That is what you said, Mr. Resnick.

Mr. Bergson: Thank you, Your Honor.

The Court: All right. Anything else?

Mr. Melchior: I would like to ask one question if I may.

The Court: Yes.

-Redirect examination.

# By Mr. Melchior:

Q. Mr. Resnick in discussing the sales organization of Alcoa and Rome do you recognize a distinction in the market between what Rome sells and Alcoa sells?

Mr. Bergson: Of what?

- Q. Of any of their products? Are you familiar with the products manufactured by the Rome Division or the Rome part of the Alcoa corporation?
  - A. Not as thoroughly as the Alcoa aluminum works.
- Q. Do you know in a general way what the Rome Divi-
  - A. (Interrupting) Yes.
- [fol. 982] Q. What raw products the Rome Division markets?
- A. The high tension cables; aluminum cables that are supplied to the power companies and through distribution. Now there are two ways of selling this material.

The Court: Now wait just a second. We know that there are lots of ways of selling. We heard it for a week. Just pay attention to what counsel asks you.

- Q. Are you familiar generally with the array of products sold by the Alcoa Company other than the Rome Division of it?
  - Mr. Bergson: What do you mean by "array"?

Mr. Melchior: I beg pardon?

Mr. Bergson: What do you mean by "array"?

- Mr. Melchior: I am talking about the products sold by the Alcoa Company.
- Q. Are you generally familiar with the type of products Alcoa sells now?
  - A. Yes.
  - Q. Have you noted any distinctions in marketing between

the products normally sold by Alcoa prior to the merger in the general aluminum field and the products

A. You lost me.

Q. Were you familiar with the products sold by Alcoa prior to the merger?

A. Yes.

- [fol. 983] Q. And what generally did this comprehend?
- A. Everything but the kitchen sink in aluminum. In fact they sold pots and pans.

Q. Did it include aluminum rigid conduit?

A. Yes.

Q. Did it include steel conduit?

- A. No, aluminum. We are talking about aluminum.
- Q. It did not include steel conduit?

A. Not to my knowledge.

Q. Did it include copper wire and cable!

A. Not to my knowledge.

Q. Now I ask you are you generally familiar with the products sold by Rome before it was acquired?

A. Not to the degree of Alcoa, but in a general sense.

- Q. In a general sense what were these products that Rome sold?
- A. Its copper wire, the copper cable, its covered copper. They were basically a copper house. Rome was a copper house.
- Q. And to what line of business activity generally were Rome's products sold?
  - A. Through the electrical distributors.
  - Q. Through electrical distributors?

A. That is correct.

Q. Those were electrical products?

A. Electrical products, and to major power companies, I think, through distributors.

[fol. 984] Q. Now to what general class of customers or for what general class of uses did Alcoa sell products?

A. To mill operators such as myself, and to mill people and I think they had the Ever-right—"Wear-ever" the old offshoot. But basically they are a mill selling—mill products is what they classify themselves as, I would say. They sell sheet to manufacturers. They sell to automotive factories. You name it and they take it and sell it.

Q. You met Rome-Alcoa as a competitor in the field of aluminum conduit?

A, Yes.

Q. Do you still recognize in their selling policies this distinction between the sales policies of Alcoa and the products they sell historically and the sales policy of Rome and their products?

A. Counsel isn't going to let me answer it.

The Court: Can we get an answer to that? I don't understand it. What policies are we talking about? You are asking for the conclusion first before you lay the foundation. You asked him if he recognizes the difference between the sales policies of Rome and the sales policies of Alcoa historically since the merger but you have not asked what the sales policies were.

[fol. 985] Q. What are those sales policies?

The Court: No. Not what are the sales policies. Apparently that is not what you want.

Mr. Melchior: I want the sales policies of Alcoa and then of Rome so we can contrast them.

The Court: But first you want the sales policies before the merger; isn't that what you are getting at?

Mr. Melchior: No. I am getting at at the present time.

Q. Is there a distinction between the policy, the sales policy of the Rome Cable products today? Do they go to different avenues? Are they sold to different types of customers than in the case of the other Alcoa products?

A. Yes.

Mr. Bergson: I can't understand the relevancy of this, Your Honor. Wire and cable products goes to one class of people and sheet goes to another class of people. We will admit that.

[fol. 986] Mr. Melchior: We are trying to clarify what the witness' direct testimony was. The witness testified there were two sales organizations, and there seems to be a failure on the part of counsel to understand what that means, and we are trying to clarify it.

The Court: Well, ask him. That's the way to clarify it.

The Witness: I am trying-

The Court: It is a very simple proposition. I mistrust

what the witness—now just a minute, please. I think the witness reasonably cleared it up once except we are back in the maze again. Have two separate sales organizations—this is the way I understand it, and if I am wrong please correct me.

The Witness: Okay.

The Court: Two sales organizations before the merger. Rome and Alcoa. I think he first started to say he had two after the merger, then he cleared it up I think by saying [fol. 987] in substance that the sales organizations of the two had combined, so that there is really one sales organization handling both products. That's my understanding.

### By Mr. Melchior:

Q. Is this your testimony, Mr. Resnick?

A. Yes, but I think I can clear the point up with one word which is known as reciprocity.

The Court: Well, all right. The one word is in the record. Mr. Melchior: No further questions.

The Court: Anything else!
Mr. Bergson: Nothing further.

The Court: That's all. We will recess until tomorrow morning.

(Whereupon, at 4:55 p.m. an adjournment was taken until Thursday, February 15th, 1962 at 10:00 a.m.) [fols. 988-989]

[Title omitted]

## Transcript of hearing-February 15, 1962

[fol. 990] The Court: All right, gentlemen. I am sorry to have held you up.

Mr. Mahaffie: Mr. Morley.

WILLIAM H. MORLEY, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

# By Mr. Mahaffie:

Q. Mr. Morley, what is your occupation?

The Court: Give me your name again. Mr. Mahaffie: I am sorry, Your Honor.

Q. Will you state your name?

A. William H. Morley, Your Honor.

The Court: 1-e-y? .

The Witness: M-o-r-l-e-y.

Q. What is your occupation, Mr. Morley?

A. President of the Narragansett Wire Company, Pawtneket, Rhode Island.

Q. Mr. Morley, how long have you been engaged in the wire and cable business?

A. A little over 32 years.

Q. How long has the Narragansett Wire Company been in business?

[fol. 991] A. Sixteen years.

QNWho founded the Narragansett Wire Company?

A. Four of us from Rhode Island; three business men including myself and a lawyer.

Q. Mr. Morley, what are the approximate annual sales of the Narragansett Wire Company today?

A. They were twelve million dollars in 1961.

Q. What products of the Narragansett Wire Company produce as of today?

A. A full and complete line of building wire products.

Q. Do you produce any products other than building wire?

A. Some control cable and some service drop and service entrance using aluminum conductors.

Q. Approximately what percentage of your total business is made up of the building wire line?

A. Approximately 95 per cent.

Q. What is the principal raw material used by Narra-

A. Copper.

Q. In what forr, sir!

A. In copper rod form.

Q. Does Narragansett produce aluminum conductor wire and cable products at the present time other than the service cable that you mentioned?

[fol. 992] A. Only service drop and service entrance.

Q. And does the company also produce copper service drop and copper service entrance?

A. We do.

Q. Mr. Morley, about what percentage of the total production line of the company is made up of products in which aluminum conductors are used?

A. Not over 2 per cent.

Q. Has Narragansett ever made a serious attempt to enter the aluminum wire and cable business?

A. Yes. In 1956 through our subsidiary, Texas Wire & Cable Company, in Plano, Texas, right outside of Dallas, at that time we contemplated getting into the manufacture of line wire and triplex using aluminum conductors. And late in the summer of 1956 we ordered gross wire drawing equipment and Edmonds Twisting Equipment for the drawing aluminum from aluminum rod and the insulator in the bare conductors into a three conductor triplex.

Q. That was to produce-

A. (Interrupting) I he wire.

Q. Aluminum line wire?

A. And we would draw the aluminum rod into solid wire and insulate for line wire and also insulate two conductors,

[fol. 993] using a bare as the third member of the three-conductor cable.

Q. Approximately what amount of money did you put into this operation in Texas?

A. Our initial investment amounted to \$145,000.

Q. And this was, I believe you stated, with the purpose of producing service drop and line wire?

A. Yes.

Q. With aluminum conductors?

A. Right.

. Q. Did you actually produce these products in Texas?

A. No. Subsequently, about seven or eight months later when the equipment arrived and was installed, the prices had deteriorated in the meantime to such an extent that it was inadvisable for us to go through with our contemplated pilot project.

Q. The prices of finished goods?

A. We would have incurred losses, not being too well integrated from the standpoint of the aluminum conductor itself.

Q. What did you do?

A. We continued to pursue our regular production program and continued with our present line with copper.

[fol. 994] Q. Did you have any additional plans in connection with that Texas operation that involved aluminum?

- A. Yes. At that time we were contemplating and ordered the equipment for the line wire and the triplex, and we knew that if we entered the field of the transmission cable with so-called ACSR, that with the prices prevailing at that time it would necessitate a further investment into a Properzi rod casting unit. We were going to take one step at a time.
- Q. Did you have plans with respect to production of ACSR?
  - A. We had planned it as the second step, yes.

Q. And what became of those plans?

A. After we found ourselves sort of blocked, due to the pricing situation from getting into line wire and triplex, and I believe at that time the price structure on ACSR was probably more competitive than the two I just named, we abandoned the entire project.

Q. What did you do with the machinery that you had ordered?

A. Well, the coarse wire drawing machine eventually ended up in Orange, California. We had a plant out there. The twisting equipment is still in Texas and is being used [fol. 995] for twisting conductors with copper.

Q. Mr. Morley, in connection with that Texas operation why was it necessary that you purchase equipment spe-

cifically for manufacture of aluminum?

A. Well, we had coarse wire drawing equipment available for copper—

Q. (Interrupting) In the Texas Plant?

A. Yes.

Q. Yes, sir.

A. And we considered it necessary at that time to buy additional equipment for drawing the copper rod.

Q. Excuse me. Did you mean for drawing the aluminum

rod!

A. Correction. I should say the aluminum rod.

Q. Why did you consider it necessary to buy additional

equipment, was it a matter of volume?

A: No, it is not practical—it is not considered good manufacturing practice, to draw copper one day and aluminum the next day on the same equipment.

Q. Is the same thing true of the stranding equipment—I am sorry, the twisting equipment that you purchased?

A. No, not necessarily so.

Q. But you did in fact purchase twisting equipment for the aluminum operation?

[fol. 996] A. We did.

Q. Now, did you in connection with this purchase of this wire drawing machine have any consultation with one or more manufacturers of that machinery?

A. We did at the time we converted it back for drawing

copper.

Q. And what did they tell you about that conversion?

A. The engineers at Waterbury Farrell-

Mr. Bergson: This is hearsay, Your Honor.

The Court: I will take it. Of course, the question is pretty indefinite, what did they tell you about that transaction?

# By Mr. Mahaffie:

- Q. Let me make it more specific. Did you receive any advice from the manufacturer of this wire drawing equipment with respect to its conversion from aluminum to copper or vice versa?
- A. In contemplating the utilization of that equipment for drawing copper instead of aluminum, we took the initiative and contacted Waterbury Farrell to ask them for their engineering recommendations.

[fol. 997] Q. And what was their recommendation?

A. They advised us to purchase an additional set of gears to be used or to be installed on the machine to draw copper.

Q. Mr. Morley, based upon your experience as a manufacturer of both aluminum and copper wire and cable products, is there in your opinion today an area or a field in which aluminum conductor products have their principal use?

A. With my limited experience in aluminum I know that the aluminum cables are used primarily for overhead transmission, for aluminum line wire, service entrance and service

drop.

Q. And is there also a field or area in which copper conductor wire and cable products have their principal use?

A. Well, that happens to be the building wire that we are engaged in manufacturing and trying to sell at the right price, principally for inside wiring of homes and buildings.

Q. Mr. Morley, what has been the profit history of the Narragansett Wire Company during the 16 years that you have been in business?

A. The first twelve years of our operations were very [fol. 998] satisfactory from a profit standpoint.

Q. You made money?

A. Did I say the first 12 years?

Q. Yes sir.

A. The last four years have been highly unsatisfactory and we sustained huge operating losses.

- Q. This is during the past four years?
- A. The past four years; '58 through '61.
- Q. Approximately how much have those losses amounted to?
- A. I hesitate to tell you but I will. They are in excess of two million dollars over that period.

Q. Now, what has caused this change from consistent profits to consistent losses in your business operation?

A. A highly intense cost price squeeze.

Q. What do you mean by cost price squeeze?

A. It is that diminishing margin between the cost of the raw materials and the selling price of the wire and cable, the building wire and cable.

Q. What has caused this cost price squeeze with respect

to the products that you manufacture?

A. My experience indicates that the loss constantly staring us in the face month after month, we really tried to find out why, and it seems to me that the dominance of the pri[fol. 999] mary producers who control the price of the rod metal which we buy on a basis of price prevailing at the time of delivery and their penetration into the fabrication industry, and I am qualifying that to the products or the product group that we manufacture.

Q. Yes, sir.

A. Namely, building wire. And through the use of other fabricating facilities and their subsidiaries in using them as means of promoting the sale of copper. Because at the present time with current competitive conditions as intense as they are, all of the profits is coming out of the metal or from the production and sale of metal, and not from the end products, the building wire and cable.

Q. This-excuse me, sir, are you finished?

A. Yes.

Q. I believe you said primary copper producers or integrated copper producers; are they your suppliers of copper rod?

A. They are not only our suppliers for the raw material, copper, but they are also our competitors in the copper bearing finished wire and cable.

Q. Mr. Morley, with respect to the cost price squeeze [fol. 1000] that you have described, has there been any change during the period of the last ten years in your costs?

A. There has been a rather drastic change in the cost of our copper metal. For instance, using a dollar as a, a sales dollar, as a yardstick, going back to 1951 as a base, in 1951 our copper cost represented 21 per cent of our sales dollar. In 1961 that percentage of cost had risen to 47 per cent. An increase of 26 per cent.

Q. Now-

A. (Continuing) In 1961 the materials used in the production of building wire declined from a percentage of 36 in '51 to 25 per cent in '61.

Q. If I could break in, by other materials, you mean all

raw materials?

- A. Plastic, yarns, glass, finishing compound and so forth, and what have you.
  - Q. Other raw materials other than copper?

A. Other than copper.

Q. You say that declined from 36-

A. To 25 per cent.

Q. Of the final dollar of sales of the company?

.A. That's right, that portion of the dollar of sales.

[fol. 1001] Q. What about your other costs?

A. We were able to hold our selling expense in line. We had a reduction from 12 per cent to 11, over that span of years.

Q. What does the selling expense consist of?

A. This was distribution expense of freight and commissions, your salaried salesmen, if you have any, and customer discounts.

Q. Do you have any other cost items, Mr. Morley?

A. Yes. In spite of the increase in taxes and other cost increases our operating cost at 1951 represented 15 per cent of our cost dollar. In 1961 our operating overhead was down one per cent, to 14 per cent.

Q. Now, your operating cost includes roughly what type

of expense? Overhead, I believe you mentioned.

A. Non-productive labor and power and heat and steam and light and some non-productive people as well, taxes, auditors, lawyers; all expense of a general nature.

Q. Mr. Morley, what about your labor expense since 1951?

- A. During that 11-year period our hourly wage rates increased 82.4 per cent and yet in 1951 there was only a change [fol. 1002] of one per cent between 6 per cent of labor costs in our sales dollar, which is now 5 per cent. It was 5 per cent in 1961.
- Q. Let me take that back, Mr. Morby. Your labor cost in 1951 was what per cent?
  - A. 6 per cent of the cost dollar.
  - Q. Of the sales dollar?

A. Of the sales dollar.

Q. And what is it today?

A. 5 per cent.

Q. So your labor expense actually has declined?

A. That's right.

Q. By one per cent?

The Court: That is due to increased productivity?

The Witness: Yes, Your Honor, and better equipment, better flow, new materials and buildings.

Q. Mr. Morley, what effect, if any, has the acquisition of the Rome Cable Corporation by Alcoa had on your company?

A. The only effect as I see it would be our inability some-

[fol. 1003] Mr. Bergson: I object, your Honor. The question is what effect has it had.

The Court: Yes.
The Witness: Sir?

The Court: Limit your first answer. The first question is limited to what it has affected, how it has affected.

The Witness: Will you repeat the question?

- Q. My question was what effect, if any, has the acquisition of the Rome Cable Company by Alcoa had on your company?

  A. None.
- Q. Now, do you expect, Mr. Morley, that it may have an effect on your company?

Mr. Bergson: I think that is highly speculative.
The Court: It is very speculative, of course. Overruled.

By Mr. Mahaffie:

Q. Do you want the question read back, Mr. Morley? A. Please.

(The reporter read back the last question as above recorded.)

[fol. 1004] 'A. It may at some future time, should we deem it advisable with, say, changing conditions and better prospects to make a profit using aluminum conductors or manufacturing building wire with aluminum conductors, we may at some future time want to try to get into that operation.

Q. That is, the aluminum wire and cable operation?

A. Aluminum wire and cable.

Q. And what do you expect the effect of this acquisition to be should you attempt to do that?

A. Sir?

Q. You stated the acquisition has had an effect.

The Court: No, he hasn't said it has an effect.

By Mr. Mahaffie:

Q. May have an effect should he attempt to enter the field.

The Court: Due to changing conditions and so forth.

By Mr. Mahaffie:

Q. What do you expect that effect to be?

Mr. Bergson: This is speculation piled upon speculation. The Court: I know, but we will add another block to the [fol. 1005] pile. Overruled.

By Mr. Mahaffie:

Q. Do you want that question read back?

A. Yes.

(Reporter read back the last question as above recorded.)

A. I thought I answered that just the question preceding that.

Q. Well-

The Court: You can ask it again.

By Mr. Mahaffie:

Q. Let me ask it again. You stated, Mr. Morley, that in your opinion the acquisition might have an effect on your company should Narragansett due to changing circumstances wish to enter the aluminum wire and cable field.

Mr. Bergson: I beg to differ, he did not state that, Your Honor. He said if he wished to enter the building wire field with aluminum conductor cable. You can have the record read back to you.

### By Mr. Mahaffie:

Q. Let's straighten that out. Mr. Morley, did you mean by that entry into the aluminum building wire field or the [fol. 1006] broader field of aluminum conductors in general?

A. When I answered the question I had in mind building

Q. Well, would you also consider entry into the broader field?

A. That would depend on the circumstances at that time.

Q. All right, sir. Now, with respect to future entry into either the building wire field or broad aluminum conductor field, what would the effect of this acquisition be?

Mr. Bergson: This is the third block in the speculation. When does it topple?

The Court: We will go up one more.

The Witness: There again it is hard to say, because new products may be developed in the future and we would of necessity have to broaden our operation to include other types of wire and cable, or types other than building wire.

### By Mr. Mahaffie:

### Q. Well-

The Court: Gentlemen, isn't the answer obvious? If he went into the field some time in the future he would have one more competitor, is that the answer?

## [fol. 1007] By Mr. Mahaffie:

Q. Well, is that the effect, Mr. Morley, or is it something beyond that?

A. I didn't get what the judge said.

(The reporter read back the last question by the Court.).

The Witness: Yes, we would have an integrated competitor.

### By Mr. Mahaffie:

Q. And would that make a difference?

The Court: Difference in what?

Mr. Mahaffie: In his chances of entry into this field.

The Court: You don't need an expert for that, do you?

Don't we all know that in any crowded business, thether it is aluminum or anything else, it is one thing that a business

man has to appraise when he goes to enter it.

Mr. Mahaffie: What I am trying to bring out, your Honor, is that the effect is not simply the addition of another competitor, it is the addition of the change from a non-integrated [fol. 1008] competitor to an integrated competitor.

The Court: That is exactly what you said, that you have an integrated competitor, and there can't be any dispute

about that.

Mr. Mahaffie: All right.

#### By Mr. Mahaffie:

Q. Mr. Morley, in your judgment, would the profits of your business be improved if Narragansett were integrated further back into the fabrication of metal.

A. No question about that, yes. Our present plans call for the erection of a copper rod mill which we hope to have

in operation by July 1st of this year.

Q. How much are you investing in that rod mill, Mr. Morley?

A. Approximately two million dollars.

Q. And why are you, can you explain why that would im-

prove your profits?

A. To improve our competitive position and get our company back on a profitable basis of operation. With this cost-price squeeze, that most of the profit is in the metal, it is our long range plans, we have been working on this for the past three years, and this rod mill should be in operation July [fol. 1009] 1st of this year.

The Court: The answer to that is you would hope to make rod in your own mill cheaper than you can buy it from somebody else?

The Witness: Yes, sir.

The Court: That is a very simple answer and very obvious.

The Witness: And we also contemplate late this year the installation of a milling furnace and a wire bar casting unit to convert the scrap generated by our rod mill back into electrolytic copper wire bar, and at the same time buy some No. 1 electrolytic copper scrap and also convert that back into wire bar.

## By Mr. Mahaffie:

Q. Are these plans for immediate execution or future

plans?

A. The rod mill, yes; the milling and casting unit, yes; and then the long range planning also calls for the purchase and erection of a small electrolytic refinery which will permit us to buy copper-bearing scrap in the New England area and convert it into good electrolytic copper wire bars. Then [fol. 1010] we will be as basic as we can get, unless we found some copper-bearing ore in our backyard or acquired a small copper mine, but if we ever get to the point where we are integrated back into the metal with a little refinery to take care of our own needs and casting and rod bar, I would be very happy.

Q. Mr. Morley, in the wire and cable business today, what are the chances of a new entrant?

A. Currently with the price prevailing in our field, a man would be most fool-hardy to risk good American dollars in such a venture.

Q. And what in your opinion are the chances of success of an existing manufacturer of copper wire and cable products who attempts to get into the aluminum wire and cable field?

A. If I were to contemplate that, I'd deem it absolutely necessary to be basic.

Q. What do you mean by that?

A. Be not only able to fabricate aluminum, but a producer of the metal itself.

Mr. Mahaffie: That's all.

[fol. 1011] Cross-examination.

## By Mr. Bergson:

Q. Mr. Morley, you testified about your plans to go into aluminum line wire and triplex back in 1956 and that you had made an intial investment for a wire drawing machine of \$145,000; when did you drop those plans?

A. The following year.

Q. 1957?

A. Right.

- Q. Did the Rome-Alcoa merger have anything to do with the dropping of those plans?
  - A. It did not.
- Q. Now, you also said that it was not practical to draw copper one day on the same machine and aluminum another day or the next day on the same machine; would it be practical to draw aluminum one week or two weeks on a machine and then draw copper a week or two weeks on the same machine?
- A. I am really not competent to answer that question one way or the other, not having had the necessary experience in the drawing of aluminum.
- Q. You also stated that when you sent the machine that you planned to draw aluminum on to California, where it [fol. 1012] was used to draw copper, that you had to change the gears; wasn't that because the gear ratio or the power ratio needed for drawing copper is higher than it is for drawing aluminum?

A. I don't know that for a fact. I only know what Waterbury Farrell recommended. We spent \$1800 in acquiring a new set of herringbone gears for copper drawing.

Q. If you had been converting a copper drawing machine to aluminum draw, which wouldn't require so much power, would such an expenditure have been necessary?

A. I don't know. I do know that when we converted the machine over for copper drawing with the new set of gears, the finishing speed was reduced from 5,000 to 4,000 feet per minute.

## [fol. 1013] By Mr. Bergson:

- Q. Isn't it a fact that on a drawing machine that you can draw more feet of aluminum per minute than you can copper with the same power?
- A. I would assume so, because you are handling less weight.
  - Q. And a softer material?
  - A. And a softer material.
- Q. So if you were converting from copper to aluminum the problem of power would not be the same as it is converting from aluminum to copper; isn't that simple logic?
  - A. Very simple. Yes, it is.

- Q. When you were talking about this price squeeze you talked in terms of percentage of cost.
  - A. Yes.
- Q. Let's talk in flat prices. What has happened to the price of copper rod?
  - A. During that period?
  - Q. During that period.
  - A. Three cents a pound from '51—three cents a pound higher today than it was eleven years ago.
  - Q. And how much higher per pound than it was two yeras ago?
  - [fol. 1014] A. Gee, I would have to trace that whole price structure back in '57. In April, 1957, copper was 46 cents a pound; by December that year it was down to 30. And the summer of the following year it was down to 25. Copper fluctuates up and down. I would have to kind of refresh my memory to get those cycles.
  - Q. Isn't the main reason for the difference in ratio on cost, cost of the rod and the price of your, that you sell your finished product for, due primarily to the price at which you sell your finished product rather than the fact—
    - A. Of course, all I can give you percentage-

The Court: Just take it a little slower. Let me see if I understand the answer. What is the answer?

The Witness: The answer, your Honor, is yes. But I can reconvert those figures to our cost dollar rather than our sales dollar and then the relative rise and fall of the market prices has no bearing.

- Q. When you have a squeeze in anything, whether it be in a product or anything else, there is something pressing up and there is something pressing down; right?
  - A. Of course.
- Q. Let me ask you this: In your product, which is copper building wire as I understand it, has the pressure been more severe from the top, the sale of your building wire product, or has it been more severe from the bottom, the cost of your purchase of copper rod?
  - A. It has been much more severe from the top. .

Q. Right. And expressing it is terms of percentages, as you did, has a little bit—well, strike that.

A. I would be glad to give you those percentages.

Q. No, you gave the percentage.

A. Yes, I gave the percentages on the sales dollar, but I can also give them to you on the cost dollar, which only fluctuates with metal, of course, and other costs. I only gave those figures to illustrate what has happened to us.

[fol. 1016] Q. I understand.

A. From the standpoint of the selling price of this cost price squeeze.

Q. Who are your principal competitors in your building

wire products?

A. All the large integrated companies; all the large independent companies, and some of the smaller independent fabricating companies.

The Court: Are you talking about copper companies now? The Witness: Copper companies.

Mr. Bergson: Copper companies.

The Witness: I am talking about the wire and cable manufacturers who use copper in the building wire.

The Court : All right.

Q. Now, isn't it a fact that in copper building wire your severest competition has come from the independents, pricewise, the non-integrated companies?

A. If you permit me to answer that question I would be

very happy to do so.

Q. Well, I asked you, so I certainly will permit you to answer.

[fol. 1017] A. Now, my opinion is that that intense price squeeze manifested—

Q. I didn't ask you about the price squeeze. I asked you about the competition in prices between you and your com-

petitors, not between you and your suppliers.

A. That competition develops through the marketing practice of the large integrated companies as well as the large independent manufacturers of building wire. Because they are three customer group classifications. Your sales manager of a large company, whether it be integrated or a large independent company, starts to work to get those customers. Now, the first group are the consignment stock



customers. The second group are the big wholesalers in the metropolitan and urban centers. And the thing that is causing so much intense competition in our particular field has been that desire on the part of the large companies to sell metal in the form of wire against a big tonnage of building wire construction contracts which they feel belongs to them and not to a small independent such as ourselves. And we recognize that fact because we don't quote or try to obtain [fol. 1018] that kind of business.

Q. Then they are not your competitors?

Mr. Mahaffie: Let him finish his answer.

The Court: No. It is perfectly proper. Because he is asking about competitors.

A. (Continuing) Our only means, our promotion of our sales of products is through an independent jobber and not on chains and big building projects. That is where all the abuses creep into this price war and causes them to sell their copper on the price at the time of the shipping and therefore through their subsidiaries they will sell building wire against a building project on a firm price that may be in the far future, two years later. So that establishes the price levels for everyday business, over the counter business we call it, through the regular jobbers. Electrical wholesalers.

Q. Do you know a company known as the Narragansett Wire Company?

A. Do I know it?

CO

Q. Oh, you are Narragansett Wire. I am sorry.

[fol. 1019] The Court: I would like to have you clear up one thing.

The Witness: Yes, your Honor.

The Court: Which to me affected your answer a lot. You say that you don't compete with those, you don't try to take the business, that large business that you speak of, which you seem to think is pretty well controlled by the larger integrated companies and the large independents. Did I understand you to say that?

The Witness: That's right, your Honor.

The Court: Then they are not your competitors. The question was directed to your competitors.

The Witness: They are competitors in this sense, that they take that business with a guaranteed price over a long period of time and that creates the price level at which we have to compete with in the sale of our products to other competing independent wholesale distributors. There is a [fol. 1020] relationship there, your Honor.

The Court: Okay.

## By Mr. Bergson:

Q. When I said Narragansett Wire Company, when I put my foot in my mouth, I meant Hatfield.

A. I certainly do.

Q. Is Hatfield an integrated wire and cable producer, copper wire and copper producer?

A. Well, they just put in

Q. Is it?

A. Not at the moment.

Q. And it has not been?

A. No.

Q. Is Hatfield known—do you meet Hatfield's competition in the trade?

A. We try to.

Q. What do you mean, you try to?

A. If the business is attractive to us, we meet the competition. When it isn't, we don't.

Q. In other words, Hatfield is a price cutter?

A. I think so.

Q. And in competing with Hatfield you have to lower your price to meet its competition?

A. We do.

'[fol. 1021] Q. Now, Hatfield is not an integrated producer. Does that have any bearing on your profits?

A. Definitely.

Q. Now, you said in your direct examination that you were in a position to make aluminum line wire and triplex; that you had the capability of making aluminum line wire and triplex.

A. Yes.

Q. And you do make copper line wire and triplex?

A. When I answered that question on direct I was referring to aluminum service drop and aluminum service entrance.

Q. Mr. Mahaffie asked you whether you had ever contemplated going into the manufacture of copper line wire and triplex and you said you had.

Mr. Mahaffie: I don't think I did.

- Q. Aluminum. I got it right here in my notes.
- A. In '56, in Texas.
- Q. Yes, air. Aluminum line wire and triplex; Texas Wire and Cable Company, Plano, Texas.
  - A. That's right.
- Q. And you put in machinery that would have given you the capability of making it?

[fol. 1022] A. That's right.

- Q. Would you need any special skills, technical skills, to make that?
  - A. No, sir.
- Q. Now I know you dropped this product because you determined at that time that it was not going to be a profitable product. If it turned out in the future that it were profiable to make aluminum wire and triplex, could you enter the business?
  - A. Not without buying additional equipment.
- Q. I understand that. You couldn't change, you couldn't use your present equipment? You couldn't convert some of your present equipment?
  - A. We don't have any idle capacity.
- Q. That is capacity. But suppose you decided to change your production mix.
  - A. Then we could convert over.
- Q. Then you could convert over and you could make aluminum line wire and triplex without any additional investment?
  - A. That's right.
- Q. Now, if, and I am indulging in the same type of speculation that I objected to—

The Court: Well, go ahead,

[fol. 1023] Q. If it should prove profitable that you could make a dollar or two dollars on aluminum line wire and

triplex, would the fact that Alcoa had merged with Rome deter you from doing that?

A. Not if we could make money.

Mr. Bergson: That is all, thank you.

The Court: Redirect.

#### Redirect examination.

## By Mr. Mahaffie:

Q. Mr. Morley, in your opinion does the fact that Alcoa has merged with Rome Cable Company have any bearing upon your ability to make a dollar or two dollars in the aluminum wire or service drop cable field?

A. Not any more so if other mergers took place of a

similar nature. I think the results would be the same.

Q. Does the fact that an integrated aluminum producer has purchased an independent manufacturer in this field have any effect on your ability to make money in this aluminum wire and cable field?

A. I believe that it does limit the potential.

Q. It limits your potential. Now, Mr. Morley, in 1956 and [fol. 1023-a] 1957 when you attempted to get into the aluminum business in Texas, I believe you stated that at that time you had equipment in your Texas plant which was capable of drawing copper and was used to draw copper.

A. That is correct.

[fol. 1024] Q. Am I also correct, sir, that you testified at that time that you did buy this additional equipment specifically for the purpose of drawing aluminum?

A. We did.

Q. Mr. Morley, who owns the Hatfield Wire Company, Wire and Cable Company?

A. I believe it is owned by Continental Copper & Steel

Corporation.

Q. Now, on cross-examination you offered to Mr. Bergson some figures relating to copper costs as a percentage of your cost dollar between 1951 and 1961. I wonder if you could give me that information, sir?

A. Our copper cost as a percentage of our sales dollar,

getting back to that same yardstick?

The Court: I don't think he asked you that.

## By Mr. Mahaffie:

- Q. Mr. Morley, on direct examination you gave us the various cost items as a percentage of the sales dollar?
  - A. Yes.
- Q. Now, I thought on cross-examination that you were about to give the copper cost as a percentage of your cost [fol. 1025] dollar in 1961 as compared to 1951?

A. Those figures all could be reduced by a factor of 20 per cent to arrive at the percentage of our cost dollar instead

of our sales dollar.

- Q. Well, I am not sure that I understand that, sir. You mean the percentages of the sales dollar if reduced by 20 per cent would represent the same cost factors as a percentage of the cost dollar?
  - A. I do.
  - Q. This is with respect to the copper?
  - A. And the other cost factors as well.
- Q. Well, can you state those percentages, or do you have them in mind? In other words, what the percentage of copper cost is as the percentage of your cost dollar approximately?
- A. Well, I said that the percentage of copper in the sales dollar was 47 per cent, so you would reduce the percentage in the cost dollar to 39 per cent.
  - Q. That is 1961?
  - A. That's right.
  - Q. How would that compare with 1951!
  - A. Well, that would be 16 in 1951 to 39 in 1961, copper.
  - Q. Sixteen to thirty-nine?
- [fol. 1026] A. Yes.
  - Q. Copper as a percentage of cost?
  - A. That's right.
  - Q. 16 per cent in 1951, 39 per cent in 1961?
  - A. That's right.

Mr. Mahaffie: Thank you, sir. No further questions.

Mr. Bergson: No further questions.

The Court: Just one question, Mr. Morley. Maybe you could clear it up for me, If you can't, I wish you would say so.

The Witness: Yos

The Court: I notice Droughout this trial there seems to be emphasis upon a situation that existed, I think, in the

aluminum industry in 1956, '57 and maybe '58. Now, was there something unusual about the price situation—well, let me ask you, in the aluminum industry during those two or three years!

The Witness: I believe, your Honor, that this change represents or is a result of the primary producers of aluminum, say Kaiser, starting to get into the field of fabricated [fol. 1027] wire and cable.

The Court: No. My question is simply this, was there an unusual situation? I don't care how it happened, in 1956, '57 and '58 was there an unusual situation?

The Witness: No, your Honor.

The Court: Well, am I right, then, in this statement, that the price of aluminum pig, ingot or rod began to go down from 1958 and is lower now than it was back there in 1956 or '57?

The Witness: That is true because of productive capacity of primary aluminum.

The Court: I don't care how or why or anything, I am trying to get a fact.

The Witness: I don't know, your Honor.

The Court: Well, as I understand it, that period in there, 1956 or '57, possibly part of 1958, was a high-price period for aluminum, primary aluminum. That is my understanding, and I am wondering if I was right about it. If you don't know, that is all right.

The Witness: I don't.

[fol. 1028] The Court: All right. That's all.

(Witness excused.)

#### OFFERS IN EVIDENCE

Mr. Wertheimer: At this time, your Honor, the Government wishes to introduce some more of its documents.

The Court: All right, sir.

Mr. Wertheimer: Documents which have previously been marked Government Exhibits for Identification 203, 204, 205 and 206, are offered into evidence at this time.

Mr. Bergson: No objection.

The Court: All right. Received. You can tell me briefly what they are.

(Government Exhibits 203, 204, 205 and 206 for Identification were received in evidence.)

Mr. Wertheimer: All right, your Honor. These documents which date back to early 1957 relate to Alcoa's interest in magnet wire as possibly a field for aluminum, possibly a field for Alcoa.

The Court: All right.

Mr. Wertheimer: Next, the government wishes to offer [fol. 1029] Government Exhibits for Identification 208, 209, and 210 for admission into evidence.

Mr. Bergson: No objection.

The Court: I will receive them.

(Government Exhibits 208, 209, and 210 for Identification were received in evidence.)

Mr. Bergson: Wait a minute.

Mr. Wertheimer: I did not offer 207 at this time.

Mr. Bergson: All right. No objection.

Mr. Wertheimer: These documents relate again to magnet wire and to REA Magnet Wire Company. Mr. Cope writing to Mr. Coffin in Government Exhibit 208 refers to aluminum magnet wire, the possibilities of aluminum magnet wire market and Rea's sales organization as having better knowledge of it. He also speaks of REA as a "high quality magnet wire manufacturer who wishes to work with us in the development of the magnet wire market for aluminum."

Next, the Government wishes to offer Government Exhibit

for Identification 221 into evidence.

[fol. 1030] Mr. Bergson: No objection.

The Court: Received.

(Government Exhibit 221 for Identification was received in evidence.)

Mr. Wertheimer: This is an announcement, Your Honor, of Alcoa's acquisition of the Rea Magnet Wire Company—I am sorry, not the acquisition, of the tolling arrangement with Rea Magnet Wire Company. It is dated October 1, 1958. By this arrangement the Rea Magnet Wire Company produced magnet wire on an arrangement much the same as the tolling arrangement Alcoa had with Rome prior to Rome's acquisition.

The Government offers Government Exhibit for Identification 223, 224 and 225 for admission into evidence.

Mr. Bergson: No objection, Your Honor.

The Court: Received.

(Government Exhibits 223, 224 and 225 for Identification were received in evidence.)

Mr. Wertheimer: Government Exhibit 223, Your Honor, [fol. 1031] is a memorandum from Philip T. Coffin, whom I believe is manager of electrical conductor sales for Alcoa to Mr. R. V. Davies, an officer of the company. He states the reasons why he believes there is what he calls an optimistic outlook for aluminum magnet wire. Some of these relate to the differences in price of aluminum and copper, different demand and supply characteristics of each metal. He refers on page 3 of this document to the complimentary nature of Rome's and Rea's product line. I quote: "Rome Cable Corporation enjoys a nice volume of business in square and rectangular magnet wire but does not go down to the smaller so-called round sizes in either copper or aluminum. I think our pushing the aluminum magnet wire operation would be a natural and valuable activity to supplement the Rome activities. Generally speaking, the same trade that the Rome salesmen call on for Rome's present magnet wire product would be the same as that for the finer wire sizes of magnet wire to which I refer."

[fol. 1032] He also speaks of "package deals," as he terms, them, and I quote: "There will be many applications with package deals involving big and small wire for both aluminum and copper, which can or will be made to advantage."

Next, the Government wishes to offer Government Exhibit for Identification 227 for admission into evidence.

Mr. Bergson: No objection.

The Court: Received.

(Government Exhibit 227 for Identification received in evidence.)

Mr. Wertheimer: Your Honor, this is a letter written ten days after the Rea acquisition by Frank L. Magee, President of Alcoa. He refers at the outset of the letter to "Our interest in the Rome Cable Corporation and now

in the Rea Magnet Wire Company." Alcoa had acquired Rome in 1959 and had just acquired Rea.

· The Court : Yes.

Mr. Wertheimer: He says that this interest, and I quote, "Stimulated by our long time confidence in the future of [fol. 1033] aluminum in the electrical industry—"and skipping down a bit in the letter, he says, "Our decision was made in the belief that we could progress faster by acquiring these two aggressive and highly reputable companies, as well as the fact that we have had friendly relations with these companies for a long time and were attracted by their keen interest in the potentialities of aluminum in their respective fields."

Next we wish to offer Government Exhibit for Identifica-

tion 207 in evidence.

Mr. Bergson: 2071

Mr. Wertheimer: Correct.

The Court: That is the one you skipped.

Mr. Bergson: That is objected to, your Honor, on the ground that it relates to electrical foil and strip sheet windings and has no relevancy to a case in which the line of

commerce charged is wire and cable.

Mr. Wertheimer: Your-Honor, we do not argue that aluminum foil and strip are included within the lines of commerce. We do submit, however, that they are related to the election [fol. 1034] trical—they are electrical conductor products manufactured by Alcoa, part of the product line which we contend gives Alcoa certain competitive advantages and indeed in some ways a substitute product in the broad sense for certain wire. In addition, your Honor, this document written by Mr. Coffin to all conductor salesmen with copies to executives of Alcoa relates to the general distinctions we intend to draw between copper and aluminum, the different price situation prevailing for each metal and the unresponsive nature of these two.

The Court: A moment ago you said something about they

might be interchangeable.

Mr. Wertheimer: I say in the broad sense, your Honor. We do not contend they are not interchangable.

Mr. Bergson: That is the beauty of being on the Government's side, you can expand like a bellows, you can be broad or narrow, whichever suits your purpose.

Mr. Wertheimer: The defendants have cited Judge Wein-[fol. 1035] feld's opinion, in the Bethlehem case in which lines of commerce were found within other lines of commerce. The first paragraph of this letter it refers to the soaring copper prices—

The Court: What is the date of the letter?
Mr. Wertheimer: The date is December 1957.

The Court: I will take it. What it has to do with this merger in 1959 I don't know.

Mr. Wertheimer: It has to do with the line of commerce issue, your Honor.

The Court: It has to do with the line of commerce issue?

Mr. Wertheimer: Yes, sir.

The Court: I will take it.

Mr. Bergson: He just said it didn't.

The Court: He says now it does. I will take it.

(Government Exhibit 207 for Identification was received in evidence.)

Mr. Wertheimer: Next the Government wishes to offer [fol. 1036] Government's Exhibit for Identification 217 into evidence.

Mr. Bergson: This is objected to, your Honor, on the ground it has no relevance or materiality to the case at issue. This is a presserelease announcing the purchase by Alcoa of the transformer division of Automation Instruments Company which former division had been experimenting with aluminum foll and sheet strip windings. Again I see no relevance to this case.

The Court: I actually don't, I don't know that they do any harm but I really don't see any relevance to it, do you?

Mr. Wertheimer: We think this is illustrative of Alcoa's attempt to push aluminum—

The Court: There is no question about it, don't waste your time on that, any business man if he is making aluminum, he is pushing it, if he isn't, he isn't worth his salt, and I don't think the Anti-Trust laws were ever intended to stop him pushing it. So all of this stuff, I think, is just [folc 1037] appendages that attach themselves to anti-trust litigation which frankly I can't see any benefit to it at all.

· Mr. Bergson: Your Honor, besides that they had witness after witness sitting in this chair saying that aluminum is

not feasible for magnet wire, that it won't work in magnet wire. Now, they stand on one foot and they stand on the other foot. Now, they are standing on no feet at all, it seems to me.

Mr. Wertheimer: We quite agree with our witnesses that aluminum wire is not suitable because of its physical and electrical characteristics; however, this doesn't relate to aluminum wire as a substitute for copper magnet wire, it relates to strip and sheet. This is precisely our point, that you have to go to a different type of product for it.

Mr. Bergson: May I ask you if you included the statistics

of this product in your line of commerce statistics?

Mr. Wertheimer: No, we didn't.

Mr. Bergson: Why? If this is the line of commerce, [fol. 1038] why not?

Mr. Wertheimer: We have referred to aluminum-

The Court: Sustained, I am just not going to take it. I am going to draw the line, see if we can get moving. I don't think it is competent, Mr. Wertheimer, I don't think it does any harm but I think I would reject it. I really don't think it does you any good at all.

Mr. Wertheimer: We contend that acquisitions by an integrated company, your Honor, in related fields, are rela-

tive to the consideration of this acquisition.

The Court: Yes.

Mr. Wertheimer: This document refers to such an acquisition.

The Court: What does it do? Tell me.

Mr. Wertheimer: I quote: "Alcoa has purchased the transformer division of Automation Instruments, Inc. at Boulder, Colorado, along with all technical data and research and development equipment in possession of that [fol. 1039] unit.

"Alcoa's market objective is the application of aluminum foil and sheet strip windings for transformers and miscel-

laneous electrical equipment."

The Court: If you do that, you could go back and show how they bought mines and so forth. That is the way all companies, are made up.

Mr. Bergson: We have a peach orchard, your Honor.

The Court: Sustained. I just am going to keep some of this stuff out.

Do you have quite a few more, Mr. Wertheimer?

Mr. Wertheimer: Yes, we do, your Honor.

The Court: All right, take a short recess at this time.

(At this point a short recess was taken after which the trial was resumed.)

[fol. 1040] The Court: All right.

Mr. Wertheimer: The next document that the Government offers in evidence is Government's exhibit for identification 361.

Mr. Bergson: Your Honor, the defendant objects to Government's Exhibit 361 on the grounds that it is composed of four papers written by people who have no connection with Alcoa and are incompetent on the ground that they are hearsay, so far as Alcoa is concerned.

The Court: What are they, Mr. Wertheimer?

Mr. Wertheimer: Your Honor, these are four technical papers, as Mr. Bergson described them, illustrating differences in physical and electrical characteristics of working aluminum and working copper. We contend, however, that they were adopted by Alcoa as a corporate admission and that they were distributed along with some notes explaining and qualifying certain terms in the papers from the Pittsburgh office.

[fol. 1041] The first page is a cover memorandum from Mr. Dallye, of the Pittsburgh office, to all electrical conductor salesmen commending these technical papers to the attention of the salesmen. Each report is preceded by a couple of pages of criticism which were accepted as corrections made by Alcoa. We contend that it is just as if the person in the head office of Alcoa wrote the technical papers themselves.

The Court: Tell me when were they written.

Mr. Wertheimer: These were written in June, 1956.

The Court: All right, Mr. Bergson, what is your explanation?

Mr. Bergson: Your Honor, the covering memorandum says this: "We think that after reading this memorandum a number of questions may occur to you. We shall indeed be glad to receive your comments and discuss any questions to your satisfaction."

[fol. 1042] This was merely a circulation of this docu-

ment to provoke thought or ideas from the persons to whom the documents were circulated, and there is no probative value in this case to any of the documents attached.

The Court: What would be the probative value of them? Mr. Wertheimer: Your Honor, this would indicate, for example, the basis in the technology of using and selling aluminum conductors and copper conductors. We contend that aluminum wire and cable can be separated for copper wire and cable for among other reasons from different characteristics and the way these characteristics affect the trade. We think these articles bring out the technical side of the characteristics quite effectively.

- Mr. Bergson: It is our position if they wanted to prove this they should have brought witnesses in to prove them and

let us cross-examine them.

[fol. 1043] Mr. Wertheimer: I understood your objection to be hearsay.

Mr. Bergson: Well, isn't that it?

The Court: Well, I think so. Of course, gentlemen, again I don't think you are going to do much harm. You have had the practical men in the industry who handle aluminum and handle copper and have had them here for days, and they described their functions. Now I suppose some learned man, probably he isn't learned, can go ahead and give us characteristics or something or other. Maybe they agree with what we already got, but I don't think they carry much probative weight to them at all as proof of the facts therein. I am not disturbed about them. I don't think the case is going to turn on them by any means.

Mr. Wertheimer: We don't either, your Honor. If you feel you have enough evidence of the definite physical electrical characteristics, all right.

The Court: I think we have. I suppose you can get text-[fol. 1044] books written even ten years ago that don't correspond with the practicalities of the day. That is what progress is I assume in the aluminum industry the same as in any other industry.

If we ever started to take this as facts, can you imagine what we would run into in articles written by scientists in regard to our space rockets. I think you could find anything that you wanted to written about them.

I think I will sustain the objection. Simply because in my

opinion without looking at them very much they don't carry any probative value.

If there is something that you have not brought out from these men who handle these problems, work with them for years, experiment with them, had research departments, and if you wish to contradict something that they have said, I think you ought to produce the man who contradicts them. I will sustain it.

[fol. 1045] Mr. Wertheimer: The next group of documents which the Government wishes to introduce at this time are Government exhibits for identification 473 through 491. I can explain these documents.

Mr. Bergson: The defendant objects to these documents, your Honor, on the ground that they are completely irrelevant and immaterial to this case.

The Court: All right. What are they, Mr. Wertheimer?

Mr. Wertheimer: These documents relate, your Honor, to the real estate and development construction projects of Alcoa, including the Century City project to which reference was made yesterday.

To explain briefly, I believe Alcoa participated in a financial sense and administrative and managerial sense in certain real estate projects, using its aluminum products for construction thereof. Specific reference to using products of Rome Cable are made in Government exhibits for identification 477, 484, 488 and 489. In addition references to [fol. 1046] aluminum conduit to be used in these projects is made in Government exhibits for identification 482 and 488. We believe therefore that these are quite relevant.

Mr. Bergson: Your Honor, these are projects in which Alcoa, particularly the one that Mr. Wertheimer referred to, is the majority owner, they are projects which Alcoa has engaged in among other things for the purpose of promoting the use of aluminum, putting the aluminum products on display to show what they can do. Their relevance to this case has about as much relevance as Alcoa promotion on sheet or tube or storm windows or siding, which is involved in these things. If we are going this far afield, we have got to try the entire Alcoa operation, because if these documents go in I am going to have to put on proof to show what the purpose of the projects were, why they were engaged in

what the circumstances are, and we are going to be here a

[fol. 1047] long time.

Mr. Wertheimer: Your Honor, we want to show that these real estate projects, these construction projects were a market for Alcoa's products, the products relevant to this case from which other suppliers were excluded.

The Court: Excluded by who?
Mr. Wertheimer: By Alcoa.

Mr. Bergson: And if we didn't put them up they would be completely excluded, because there wouldn't be any place for their products to go. I think it is entirely ridiculous to say when a company puts up a project of its own that they can't use its own materials.

Mr. Wertheimer: We are not contending they couldn't use their own materials, we are not questioning the legality of these projects.

Mr. Bergson: What are you putting them in for?

Mr. Wertheimer: To show the market that Alcoa has for [fol. 1048] its products, the market that is denied to other competitors.

Mr. Bergson: I don't know what else to say to your

Honor.

Mr. Melchior: May I make a few remarks?

The Court : Sure.

Mr. Melchior: I think maybe we ought to explain these a little more. These are documents we have recently secured by discovery of Alcoa, and they are memorandums prepared by highly placed officials of the defendant. Certain of these officials are to be witnesses for the defense in this case. These documents relate to the matter that Mr. Harvey spoke of yesterday. They relate in part to that, and these were the matters that were requested of Mr. Harvey in writing. We feel these documents will supply to you in writing the facts that Mr. Harvey could have testified to only by hear-say.

Now, they tie into the merger very closely in that it shows the way Alcon is using the assets it acquired in the Rome [fol. 1049] merger and the Cupples merger and I believe the Rea merger. It shows how they tie in their sales of their ordinary aluminum building products to the electrical products produced by Rome, and it involves aluminum wire and cable, and it involves aluminum conduit, and 'specifically Rome, because the company is mentioned in here and we think they are very highly relevant to this proceeding.

Mr. Bergson: Your Honor, these are documents that the government obtained under the motion to produce in the Cupples case. If you will recall when we had our discovery proceedings in this case the government asked for Cupples documents and you ruled that anything other than the mere fact of acquisition by Cupples was irrelevant to this case and denied the government's motion for production on those grounds. Now, all that apart, that is history, and the government is now using these documents obtained in another case in this case.

[fol. 1050] But the thing that I can't understand is how it helps to show that the acquisition by Alcoa of Rome substantially lessened competition when Alcoa desires to use the products of Rome, be it in a building that it decides to put up and which it owns. If it had not decided to build the building there wouldn't be any place for any products to go, but by building these buildings and by showing what aluminum can do in these buildings they increase the opportunity for sales of all competitors in other buildings which Alcoa doesn't own.

It has no bearing on this case at all.

The Court: I don't see that it would have any bearing if the background is what you indicate. Certainly I would think that you might sustain another lawsuit if Alcoa builds a building on behalf of the stockholders, builds a building and uses somebody else's materials to build it with. I would [fol. 1051] be a little suspicious that somebody might well claim a mismanagement.

I see nothing sinister at all in this, the building of a building, if I understand this thing right.

For instance, some of these are buildings built by Alcoa and owned by Alcoa.

Mr. Melchior: That is not completely the case.

The Conrt: I can only take one thing at a time. Now, how in the world is that of any importance to me here?

Mr. Melchior: Well, one of the problems your Honor seems to have faced throughout this case, because you have asked questions in this direction, is how do we tie this question of squeeze, how do we tie market power into the Alcoa-Rome merger. In some cases it is difficult to do other than

show the market conditions and how the market conditions and how the merger aggravate market conditions for a non-

integrated company.

[fol. 1052] Now, we think this is the most relevant type of information that we can give to you. Here we have a specific case where Alcoa is using its power in the market-place and is using the facilities it acquired from Rome and from Cupples for the very purpose of broadening its own opportunity to supply these products in a multi-million dollar project in California.

The Court: Wouldn't any company, whether it be Kaiser, Channel Master, Hatfield, wouldn't they be remiss in their duty to their own stockholders and to business as a whole not to try to increase their own output, and wouldn't they be remiss if they didn't at least try to do it in their own

buildings?

Mr. Melchior: These are not their own buildings, your Honor.

The Court: That is something else again.

Mr. Bergson: We don't own these buildings a hundred percent, we are in a joint venture with Webb and Knapp. We own the majority. We have control.

[fol. 1053] Mr. Meichior: And we wish to show by the writings of Alcoa officials that it is impossible for aluminum conductor wire and cable and aluminum conduit to be put on that project unless the aluminum is made by Alcoa.

The Court: Everyday occurrence,

Mr. Bergson: They would be crazy if they didn't.

Mr. Melchior: But you have that against the backdrop of the power of Alcon in the marketplace.

The Court: Certainly, and we have the statistics to show the power of Alcoa.

Mr. Melchior: And this shows it further. These, incidentally, since Mr. Bergson raised the point that these are documents from the Cupples case, these are documents which are dated in 1961, and these are documents which they apparently didn't have available when we made discovery in this case.

Mr. Hergson: You wouldn't have gotten them anyway, [fol. 1054] because his Honor ruled you were not entitled to it.

Mr. Melchior: These related to the merger because they involved the facilities of Rome.

Mr. Bergson: Your Honor, do you ever watch Maverick on television?

The Court: No.

Mr. Bergson: Well, that is a television program that is sponsored by the Kaiser Company, and they show their Kaiser office building and they say "Every single bit of material in this building was supplied by Kaiser Company. The cement was supplied by Kaiser Cement; the steel was supplied by Kaiser steel; the aluminum was supplied by Kaiser Aluminum." And they would be crazy if they didn't.

Mr. Melchier: This is the very thing that we insist makes

life difficult for the men who testified here this week.

The Court: My dear gentleman, does the United States, does the anti-trust division claim that because life is made [fol. 1055] difficult in the competing in business that it is unlawful?

Mr. Melchior: No.

The Court: Isn't life made difficult in the electrical business?

Mr. Melchior: In the context of a merger.

The Court: It is a simple question. I don't understand that the anti-trust division or the United States Government or the statute in any way intends to cut out competition. Does it in any way intend, until you get to the force of a monopoly, does it in any way—doesn't it encourage rather than discourage the broadening of commerce and the increase of their business. Isn't it in the interest of any business, whether it is the shoemaker on the corner or the steel companies in Pennsylvania? They are trying to increase their business. So when the shoemaker makes his own shoes and uses his own material, is there anything sinister about [fol. 1056] it?

Mr. Melchior: We don't insinuate there is anything sinister, but we have to consider this in terms of merger. Congress has said that the merger trend shall not continue and that these mergers shall not take place if it has the following principal effects.

The Court: Your first, premise I am not so sure about your statement that the merger trend shall not continue. I am not certain that that is the basis at all. Mr. Melchoir: I think the legislative history is replete with statements to the effect of concentration—

The Court: That is something different. Don't switch

back all the time.

Mr. Melchior: I am not switching back.

The Court: You said that Congress said that mergers shouldn't continue.

Mr. Melchior: I think I said both.

[fol. 1057] The Court: Then you switched to concentration. You have two different propositions entirely.

Mr. Melchior: But they are related.

The Court: Well, they may be related if you show they are related. They are not related prima facie.

Mr. Melchior: We feel that one follows the other, how-

ever.

The Court: One follows it if you prove it.

Mr. Melchior: That is what we are attempting to do.

The Court: I understand that, but we are talking about the congressional meaning. Well, gentlemen, again you got a situation there where I don't know just what effect this has. These generalities we have in the context of the act and so on and so forth is always very hard for me to understand. What I want and am going to try to get is something cold, something hard that I can put my finger on rather than the generalities that generally find themselves in this sort [fol. 1058], of case. If it substantially lessens competition, why that is what we got.

And the fact that an aluminum company requires some products to be used in a business enterprise over which they

fance constroil

Mr. Bergson: About a 75 percent interest, your Honor.

The Court: T-don't think it has much probative force. I think it is common. I think, just as I-said, I think they might well be subjected to lithzation if they didn't.

Mr. Melebior: We think this directly shows one of the ways in which this merger would substantially lessen competition in the aluminum wire and cable field and in the aluminum conduit field.

The Count: There is no question about this, that if every builder, and there are a substantial number of them, go into the building field and presertibe their own product, cortainly quest of the marriset is forced-seed to anywerse close. [fol. 1059] Mr. Melchior: That's right.

The Court: Do you have any case that indicates in any way that such an operation is any evidence of undue concentration?

Mr. Melchior: I believe we did have some testimony of that-

The Court: I am asking about a case. About a decision.

· I just can't consider it. It happens every day.

Mr. Bergson: I can show you a decision, your Honor, where the Supreme Court said that a subsidiary is expected to buy from its parent.

Mr. Melchior: We don't have this situation here. Rome

is not buying from Alcoa.

Mr. Bergson: All right then, a parent buy from a sub-

sidiary. What difference does it make?

Mr. Melchior: That is not here. This is a construction project in which independents are barred by virtue of Alcoa's investment in this.

[fol. 1060] - Mr. Bergson: And may be barred even further

back if they didn't intend to go ahead with it.

Mr. Melchior: May I finish my statement. We have already had some testimony to the effect that this is not only being done by Alcoa but by the other integrated producers in the industry.

The Court: Then you get to the proposition where you

have a monopoly.

Mr. Melchier: I don't think we have to show monopoly in a Section 7 proceeding.

The Court: That's right, you don't. I don't understand

that there is any claim of a monopoly here.

Mr. Melchior: There is a claim, we allege not only is there a substantial lessening of competition, but it tends to a monopoly. That is our claim. To this extent it is highly relevant.

The Court: Well, again I don't think there is anything that is soul-shaking about this that the case is going to turn [fol. 1061] on. I will defer on that and see what it is all about.

Mr. Melchior: All right, sir. Your Honor, I have just a few more documents here which I will explain very briefly. This hasn't been marked. It is GX-496 for identification.

Mr. Bergson: GX-496? May I see a copy of it?

Mr. Melchior: You have a copy of it, Mr. Bergson. It is the Census letter.

(Letter dated January 30, 1962 from the Director of Bureau of Census marked as Government's Exhibit 496 for identification.)

Mr. Melchior: That is a letter from the Director of the Bureau of Census, United States Department of Commerce, in response to a letter we wrote to them an January 30 requesting that they give to us any changes which may have been made in certain published totals.

The Court: January 30, 1962?

[fol. 1062] Mr. Melchior: Yes, sir. January 30. We just received it the other day.

The Court: 1962!

Mr. Melchior: Yes, sir, 1962. It has to do with certain tabulations that we introduced and changes have already been made in your copy and defendant's copy.

The Court: All right.

Mr. Bergson: I have no objection, your Honor, but I think it points up the inaccuracy of the census figures because they have to be rattling around while the case is going on.

Mr. Melchior: Well, as a matter of fact-

The Court: All right, gentlemen, go ahead.

(Government's Exhibit 496 for identification received in evidence.)

Mr. Melchior: I offer 63-411—strike that, please. Government Exhibit 409 and Government's Exhibit 410 for identification. I offer them at this time. These are BDSA [fol. 1063] forms 122 and 84, the forms used by that agency in quoting statistics.

Mr. Bergson No objection.

The Court: Received.

(Government's Exhibits 409 and 410 for identification received in evidence.)

Mr. Melchior: GX 411 for identification is an article from. American Metal Market dated February 21, 1961 which relates to Roebling's acquisition. Do you wish to comment on that?

Mr. Bergson: No, I will wait until you finish. You can tell what it relates to.

Mr. Melchior: I offer it at this time.

Mr. Bergson: I object, your Honor, on the ground it is a newspaper story and hearsay.

Mr. Melchior: Now, we will be glad to—

Mr. Bergson: It is a far cry where we put newspaper articles into a record in a trial of a case, even an anti-trust case.

[fol. 1064] Mr. Melchior: We are offering this merely to prove that the Reynolds Metal Company in 1961 acquired the wire and cable facilities of John A. Roebling and Son, and if counsel will stipulate that on the record we won't offer it.

The Court: I think it is already in the record several times.

Mr. Bergson: It is on the charts, your Honor.

The Court: It is already in the record.

Mr. Melchior: GX-412 for identification, which is an extract from Moody's Industrial Manual in regard to the Aluminum Company of America. It relates to certain facts.

The Court: What is the number?

Mr. Melchior: GX-412 for identification.

Mr. Bergson: No objection.

The Court: Received.

(Government's Exhibit 412 for identification received in evidence.)

[fol. 1065] Mr. Melchior: I next offer GX-413 which is an extract from Standard and Poors publication industry services dealing with aluminum, copper and fabricating metals. This document contains a great deal of industrial information in condensed form. I do not believe there is much in here that would be contradicted by defendant. We attempted to get these papers into the record by stipulation immediately prior to trial, but defendant in its letter to us indicated that they would not enter into that stipulation because the facts were drawn out of context. So in order to assist the Court we thought we would offer the full context merely for what the information is worth.

Standard and Poors, as your Honor undoubtedly knows,

is a reliable publication and business concerns and individual investors rely on it to make their investments.

I offer 413 for identification.

[fol. 1066] Mr. Bergson. I object on the ground it is hearsay. This is a Standard and Poors, as he says, industry survey. In the first caption is "Selective holdings warranted." They are advising investors what to invest in.

The Court: Maybe I could get some good stock.

Mr. Bergson: I am perfectly happy for you to look at it, but I don't think it should be part of the record in this case.

Mr. Melchior: We don't think the document is really that important. We merely think it would provide some industry information which am sure the defendant and plaintiff would very willingly agree on if they had the time to sit down and go over it.

Mr. Bergson: But there is so much editorial material in

here.

Mr. Melchior: We admit it is hearsay. The Court: I think I better sustain it.

[fol. 1067] Mr. Melchior: A group of documents GX-416 to GX-420 for identification. These are articles copies from Modern Metals, which is an industry magazine in the metal field.

Mr. Bergson: Your Honor, I-

Mr. Melchior: I have not finished, Mr. Bergson.

Mr. Bergson: Oh, excuse me.

Mr. Melchior: From American Metal Market. We are not offering them for the truth of the facts contained therein. We are merely offering them to show that the periodicals in the trade treat aluminum and copper separately. These are four brief announcements.

I offer them at this time.

Mr. Bergson: Your Honor, I object. These are hearsay. They are newspaper stories. Let me read one of them to you just so you can see what they are like. This is 416, I take it, because it is the first one: "Heavy aluminum cable [fol. 1068] users—particularly some public utilities in the south—are getting cable at bargain basement prices these days. Stuff that normally markets for 30 to 33 cents a pound, which beats the hell out of copper or any other material, is currently selling for 26.3 to 27.7 cents. No freight charges either. One 22 million pound order recently went at 26.28

cents a pound, just a fraction of a cent above the price of primary ingot. The Justice Department will have to look hard to find price fixers in the aluminum cable business."

This shows the difference between copper and aluminum. Take another one which says, "Copper wire mills' price war rages."

I submit that is not the type of material that should be received in a lawsuit.

The Court: I think I will sustain it.

Mr. Melchior: We now offer Government's Exhibit 414 for identification and Government's Exhibit 255 for identified. 10691 fication.

Government's Exhibit 414 is an article drawn from the magazine, trade magazine Modern Metals. It is entitled "Alcoa 1960."

Government's Exhibit 255 is an inter-corporate memorandum of the Aluminum Company of America which refers to this particular magazine article and it indicates that the statements made or attributed to Alcoa officials contained in this article have been adopted by the company.

In other words, we are offering the article, we only offer so much of that article as contains statements by Alcoa officials. And we offer Government's Exhibit 255 for identification in support of the fact that these quoted statements have been adopted by the company.

I will offer them at this time. Incidentally, this is an

article which extolls the virtues of Alcoa.

The Court: Well, I just don't want to hear their virtues [fol. 1070] at all. I want nothing but the facts.

Mr. Melchior: We think the article contains facts. We could reduce the size of this exhibit by offering two pages of it, pages 62 and 64. The intervening page being an advertisement which we have deleted.

Mr. Bergson: 62 and 64?

Mr. Melchior: Page 62 and 64.

Mr. Bergson: My copy of the article only has 24 pages.

Mr. Melchior: We are going by the number that appeared in the magazine. Page 62. That is the next page, and that section of the article is entitled "Alcoa and copper."

[fol. 1071] Mr. Bergson: Well, your Honor, may I be heard for a moment on this?

The Court: Yes.

Mr. Bergson: There are quotes in here, but the memorandum referring to this document has this statement: "I took into consideration all the comments of those who reviewed the initial draft, made the changes that were suggested and turned the corrected copy over to Bill Griffin on Friday, June 5. How many of these proposed changes he will accept is anybody's guess. He will, I believe, take most of the changes in which quotes are involved. However, he is quite independent and will probably do what he pleases with his own editorial comment."

Now, I again submit this is not the type of evidence for a lawsuit of this kind.

Mr. Melchior: Now, the final page of that memorandum states this: "All quotes may be edited. In many cases words have been artificially put into the mouths of different people, so don't be surprised if you can't remember making certain [fol. 1072] statements. We are at liberty to shift quotations from one person to the other—" These people being Alcoa officials mentioned in the article—"and if we don't want to be quoted on some point we can suggest Modern Metals say it themselves."

Therefore we can understand from this statement that all the quotations in the article attributed to Alcoa officials

were made by Alcoa officials.

Mr. Bergson: Now, your Honor, again I want to say, I don't want to belabor this, but what Mr. Melchier was reading from was not the second page of the memorandum.

Mr. Melchior: Last page.

Mr. Bergson: From which I read. You read from a memorandum dated May 25, 1959, and I read from a memorandum dated June 8, 1959, either of which is on one page.

Mr. Melchior: This is a series of about four memoranda all related one to the other, and we have marked them as

one document.

The Court: Well, doesn't the last memorandum indicate [fol. 1073] that this article that you referred to is going to be edited by somebody and he is going to do as he likes in regard to some quotes?

Mr. Melchior: Not with respect to the quotes. He could

edit the article but not the quotes.

The Court: Wait a minute, I think he does say something about the quotes.

Mr. Bergson: He does, your Honor.

The Court: That's what I thought. What does he say the quotes—let me see the memorandum. (Document handed to Court.)

Well, this is a document of June 8, 1959, which is later than the document that you referred to.

Mr. Melchior: Well-

The Court: Which would indicate to me that the document that you are referring to is subject to some later correction.

Mr. Melchior: Well, I don't think it changes it, though. You notice he says he is quite independent and will probably do what he pleases with his own editorial comments, mean-[fol. 1074] ing the writer of the article.

The Court: What has he done?

Mr. Melchior: He hasn't had authority to change a quote.

The Court: What has he done?

Mr. Melchior: Has the writer done?

The Court: Yes.

Mr. Melchior: We don't know what the discussion was about, but we know the quotes are accurate and that is all we are offering it for.

The Court: I don't know about that.

Mr. Melchior: Well, your Honor, this document is not that important.

The Court: I will sustain it.

Mr. Melchior: Now, the final three documents are the Government's Exhibit for Identification 421-A, 421-B and 421-C. These are chapters drawn—they are reprints drawn from Mineral Facts and Problems, 1960 Edition of the Department of Interior, Bureau of Mines, that relate specifically to copper, aluminum, alumina and bauxite, and they are [fol. 1075] in the nature of background information. They are Government publications.

Mr. Bergson: I have a little problem with these documents, your Honor, because they are government documents and I think government documents should be given considerable weight, but there is a chapter which does some crystal-ball-looking in these memoranda, called "Outlook and Problems," and this is the editorial guesswork of the author and I don't think it is proper evidence.

Mr. Melchior; If Mr. Bergson's only objection to this

document is that, we could strike that part of it and let the rest in for background. Do you have any objection?

Mr. Bergson: No. Let's find dut what parts we are strik-

ing out.

Mr. Melchior: The part entitled "Outlook."

Mr. Bergson: "Outlook and Problems."

Mr. Melchior: Whatever the conjecture is. We don't want

conjecture in the record unless it is necessary.

Mr. Bergson: Well, let's outline it so there won't be any [fol. 1076] question about it. Government Exhibit 421A, the part that is to be disregarded is on the bottom of page 10 and all of page 11, right?

Mr. Melchior: Agreed.

Mr. Bergson And on 421B, practically all of page 14 and page 15.

Mr. Melchior: Agreed.

Mr. Bergson: And 421C, the bottom of page 23 and all of page 24.

Mr. Melchior: Agreed.

The Court: All right. I will receive it with those limitations.

(Government Exhibits 421A, 421B, and 421C for Identification received in evidence.)

Mr. Melchior: Your Honor, the Government has nothing further on its case in chief.

The Court: Why don't I recess. You can check your exhibits so you will be certain you have them in. If you haven't got them in, let's wait until after lunch to formally close it. You can check your records in the meantime.

Mr. Melchior: All right.

The Court: We will recess until 2:15.

(Whereupon, at 12:50 p. m. a luncheon recess was taken to 2:15 p. m.)

[fol. 1077]

AFTERNOON SESSION &

APPEARANCES: (Same as at Morning Session.)

The Court: All right, Mr. Melchior. Do I understand the Government's principal case is in?

Mr. Melchior: Yes, we think so. The only question we

have is these documents which were introduced with respect to Century City and others this morning.

The Court: I said I would take a look at them.

Mr. Melchior: Yes, you said you would look at them.

The Court: All right, I will still reserve, and if in the course of the argument either one of you want to refer to them, why, go ahead and refer to them.

Mr. Melchior hall we make them available to you?

The Court: Yes. I will look these over tonight when I have a little time.

#### THE GOVERNMENT RESTS

All right, the Government rests. All right, Mr. Bergson, [fol. 1078] and motions here?

# DEFENDANT'S MOTION TO DISMISS COMPLAINT

Mr. Bergson: May it please the Court, at this time the Defendants move to dismiss the Government's complaint in this case on the ground that the Plaintiff has failed to establish by a preponderance of the credible evidence that there has been, that the acquisition of Rome Cable by Alcoa may probably or probably will lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

## THE COURT'S STATEMENT

The Court: Well, gentlemen, as long as we have the afternoon free, I think I would like to hear you. There is no secret about the fact that I don't feel that I have this case in my hands. I was going to say that I have control, but that isn't the right word. But it is perhaps an understanding, and I would welcome argument on it which may be helpful to me in going on further in the case if I decide to deny this motion. Now, perhaps, a little word from me might help you in your argument.

[fol. 1079] As I see these cases or this type of case, it is not a price-fixing case. It is not a monopoly case. It is not a case of unfair business practices. It is a case—the ultimate finding which a Court must make is whether or not this acquisition substantially reduces competition. That in substance. Or tends to create a monopoly.

No. 1, I am not impressed at all with the last part of the language of the statute as tending to create a monopoly. So I really think that the crux of the case is "a substantial lessing of competition."

Now, in order to arrive at that decision I have got substantially three things to determine. Or, putting it another way, the Government has three things to establish.

Number one, to designate the lines of commerce, which

are involved:

The market, because I have to have something in determining the competition with which to equate the lines of commerce. They have got to establish the market.

And number three, the conclusion to be drawn from the, [fol. 1080] or the ultimate finding to be drawn from the consideration of those first two—that is the line of commerce and the relevant market.

Now, if I read you gentlemen's briefs right, there is an agreement—strike that out.

I think the Government urges that there are ten applicable lines of commerce. And perhaps we could shorten this argument and get it down to something closer if we find out before the argument starts whether or not the Government stands on each of the ten lines of commerce that they have outlined in their brief. On the other hand it is my recollection that the Defendant at least agrees that there are some three lines of commerce, three or four, that may be of value, perhaps may be the way to put it, and correspondingly we may find from them before the argument starts, whether at this stage of the case it has changed as to the addition or subtraction of other lines of commerce.

Ifol. 1081] Now, beyond that, I guess, my mind is pretty much a blank. I realize that the Government's burden is one that is difficult to prove in a factual way, in the way you would prove a negligence lawsuit. That these are ultimate facts have got to be the result of inferences drawn from proven facts. Of course, on the other hand, even though that is true, which I recognize as true, their burden is not relieved. It is still their burden by a preponderance of the evidence. But they probably have to rely on an inference to be drawn from some established fact rather than a clear exposition of an unreasonable restraint of competition. I guess that about sums up my understanding of the case.

Maybe I could make a few other general statements that might help you or confuse you, one or the other.

Number one, I don't understand that the Government seeks to interfere in business beyond that which reasonably, clearly shows competition. Another one is that you can't overlook, just because we are trying an anti-trust case, the [fol. 1082] everyday action of business, that it is perhaps the obligation of any business concern, all business concerns, to increase their acceptance of their product in the market. Everyone engaged in business is, as I understand it, forever seeking a larger acceptance of its goods, a pricing policy that will promote public consumption.

Another thing that requires no particular proof, as I see it, which is a fact of life, that a large manufacturer has by reason of the very nature of its size, its resources, its capabilities, may have an advantage over a small manufacturer. And I am not alarmed at all by the fact that a person or firm entering into a new field, whether it is aluminum cable or conduit or copper or most anything else, ordinarily finds under our business climate that he doesn't fairly often start off with the same margin of profit that those engaged in that business may enjoy. So that I am not shocked at all by the fact that any business where it is reasonably competitive, [fol. 1083] has some difficulties for the man seeking to enter it.

I am not disturbed either by the fact that one may have, by reason of size and financial resources and experience and so on, has the ability to advertise where the other man perhaps does not. But I don't understand that the Anti-Trust Law is intended as a cure all for those inequalities that seem to have been historically a part of the business itself.

In connection with these very exhibits that I have not ruled upon, we every day see the lumber company go out, buy a tract of land, build their house, and of course they use their own material. They would be remiss probably if they didn't.

And, very frankly, up to this date I have not seen any particular thing that has disturbed me in connection with this acquisition in so far as the competitor's business of making aluminum conduit, wire, or what have you.

And, I guess, with that statement I better let you talk,

[fol. 1084] and maybe I could do better by keeping still and listening for a while.

One more think that I have in mind—I have forgotten it now. Oh. Does it clearly appear in the evidence that there has been an increase in the number of aluminum fabricators, if that is the right word, in the past few years? I got the impression that there has been.

But, in thinking it over, I am not so certain that the increase in the number does appear actually in the evidence

or not.

I guess that was the thing I had in my mind. I got the impression, and I am not so certain whether it is simply my own thought about it or whether there is something positive in the evidence that shows perhaps the number of manufacturers of wire and cable and conduit have increased over a period of years.

# COLLOQUY BETWEEN COURT AND COUNSEL

All right. Now, Mr. Bergson, why shouldn't I immediately grant a summary judgment against you.

[fol. 1085] Mr. Bergson: Against who?

The Court: Against you, even without a motion.

Mr. Bergson: I can think of a lot of reasons, which I am sure Your Honor won't want to hear.

The Court: Well, I heard a lot of them.

Mr. Bergson: The easiest one in this circuit is that there are material issues of fact between us.

The Court: Yes. I have been told that a couple of times. Mr. Bergson: I suppose the other reason is that they haven't proven a case.

The Court: All right.

Mr. Bergson: I think your Honor's suggestion that we see if any lines of commerce can be eliminated or not before the argument commences is an awfully good one, and I suppose you might want to ask Mr. Melchior that first.

The Court: I assume that that is true. You have ten, or

at least in your briefs you outline ten.

[fol. 1086] Mr. Melchior: Yes, your Honor, ten. If I may make one statement, I am not sure what you expect of the Government this afternoon, but if you would expect a full scale argument, why, we would have to marshal our evidence and we would urge we be given a little more time to do this. I would be glad to discuss anything you want, however.

The Court: I don't know whether I do it right or not. What I would like is a give and take argument here, where I can find out the exact points of difference. That problem is a hard one for you, because it is just natural that you will fall back upon an answer which is generally like this, well, we think in the context of the whole business conditions as shown here that there is a restraint.

Now, I can't find any fault with that answer, but, of course, it doesn't satisfy me. After all, it doesn't mean anything. It simply means you think you ought to win, you think you have made cut a cause of action. What I would Ifol. 1087 like to do is get right down, if I can, to the factual points upon which you draw your conclusions, but don't let me get away from it now. Are you in a position to say that your attitude in regard to the number of commerce claims is still the same ten, do they embrace the same ten that you indicate in your brief?

Mr. Melchior: Yes, we think they do, the same ten lines

of commerce.

The Court: All right. Now, Mr. Bergson, I think you——Mr. Bergson: We agreed with some of them.

The Court: You have agreed with some of them substantially in substance, that if they prove it, you are probably not going to get away from it. What are the three?

Mr. Bergson: There are more than three we agreed on. We agreed that ACSR and all aluminum cable, bare, that is, the transmission and bare distribution cable which you heard some of the witnesses testify to and which Mr. Fosdick stated had been taken over, aluminum has taken over 95 per cent in overhead uses and so forth, we agree that that [fol. 1088] is a line of commerce.

The Court: All right.

Mr. Bergson: We, of course, violently disagree that there has been any substantial lessening of competition in this line of commerce. We disagree—you want me to go through the agreements?

The Court: Yes, I think you better put those that you sort of agree upon-you sort of agree on ACSR?

Mr. Bergson: Right. We agree that wire and cable generally, aluminum and copper combined, is a line of commerce.

We agree that insulated aluminum and copper wire and

cable is a line of commerce, together, this is one of the Government's lines.

We agree that conduit is a line of commerce, not aluminum conduit, but steel and aluminum conduit constitute a

separate line of commerce.

There hasn't been any evidence on this point, I think we [fol. 1089] fudged a little bit on whether or not copper, bare, wire and cable, constituted a separate line of commerce, copper and aluminum, bare, constituted a separate line of commerce. We feel that because of our concession on ACSR and all aluminum cable, bare, that it is hard to reconcile that with copper and aluminum, bare, line of commerce, although we had urged that in our brief.

I think those are the areas of possible agreement.

Now, how we approach those areas and the effects of those areas, we are as far apart as the poles.

We disagree that aluminum insulated wire and cable is a separate line of commerce as contended by the Government.

We disagree that aluminum wire and cable generally, including both bare and covered, is a separate line of commerce, and we disagree that aluminum conduit is a separate line of commerce. We disagree that there is a separate line of commerce known as E.C. pig and ingot and redraw rod: [fol. 1090] Does that set it up?

The Court: I think so.

Mr. Bergson: And that service drop—I had forgotten about service drop—that service drop is a separate line of commerce because that is just another insulated product.

Mr. Melchior: Do you agree or disagree on that?

Mr. Bergson: We disagree.

Mr. Melchior: You disagree on that?

Mr. Bergson: Yes.

The Court: All right. Perhaps maybe I can start you out on your argument by asking you why haven't they proven a cause of action?

ARGUMENT ON BEHALF OF DEFENDANTS BY MR. BERGSON

Mr. Bergson: That really gets me started.

I think the best way to argue this, Your Honor, ignoring the law if we should, I don't know whether you want me to make the same argument on the law I made on the opening

statement, what constitutes a line of commerce, what is the relevant market, is it based on the question of peculiar characteristics and uses or is it the test of what the area of effective. Ifol. 10911 tive competition is. Frankly, we think the cases pretty clearly demonstrate it is the area of effective competition, and in those cases where the peculiar characteristics, and uses test have been used, that in those cases it has been demonstrated that those peculiar characteristics and uses constitute the area of effective competition; that there are no interchangeable or substitute products.

I think that the best summarization of the test is the whole quote in the General Motors-Dupont Case, which we recited in our brief and upon one sentence of which the Government, or on part of one sentence of which the Government relies, or the statement of Judge Herland, in the Screen Genes Case, where he says that the interchangeability and the peculiar characteristics and uses test are merely verbalisms stating the same thing, and that the real problem for the Court to determine is the area of effective competition and what transpired within that area of effective competition.

Now, with that backdrop, if it is enough, and I would be [fol. 1092] glad to expand on it—

The Court: Yes, I think it is. You and the Government disagree on the law as to the standard to be applied in a Section VII case?

Mr. Bergson: Right, The Government says that taking the language of one sentence from General Motors-Dupont, they say the test is peculiar characteristics and uses. Now, the language in General Motors-Dupont, just using the sentence that they refer to, is sufficient peculiar characteristics and uses as to constitute a separate line of commerce, not the mere existence of physical characteristics and uses, but substantial physical characteristics and uses as to constitute a separate line of commerce. And the line of commerce as the Court said in the preceding sentences, is the area of effective competition.

Now, the Government in its brief has adopted a new concept, which I think they call distinguishable economical context. I am sure you read that.

[fol. 1093] The Court: Yes, I did.

Mr. Bergson: And for the life of me I don't know what it

means, and there is no support for any such language in any of the cases that I am aware of.

Now, the cases that they have relied on are cases where the Court has found as a matter of fact that there are no substitute products, there are no products with sufficient characteristics and uses as to prevent them from finding a separate line of commerce.

These cases have gone off on the facts that have been adduced in these cases.

In Bethlehem Steel, for example, the Court found that there were no substitute products. In the Crown Zellerhach Case that the Government relies on, the Court found as a matter of fact that the product that the Defendants were trying to bring in were not substitute products, they couldn't be used for the same purpose, they did not constitute—well, let me see if I can put it differently, that there were no products other than the products involved which were within [fol. 1094] the area of effective competition.

Now, in this case we have ten lines of commerce as alleged by the Government, so we have to determine whether there are ten areas of effective competition. Now, the Government has said that ACSR and all aluminum cable, bare, is a separate line of commerce. We agree with that because that product or those products constitute an area of effective competition. There are no other products which can properly be brought within the definition of that line of commerce. Sure, there is overhead bare copper, but the Government proved that that is used mainly in sea coast areas; that it has been largely taken over by aluminum; that the cost differential between the two is so great that they don't come within the same area of effective competition.

[fol. 1095] We say in respect to that line of commerce that the Government has not shown any substantial lessening of competition within that area of effective competition.

The Government has shown, and they have proved it to a fare-thee-well, that bare ACSR bare and all aluminum cable has occupied the overhead transmission field. But they haven't shown by one iota of proof that competition has been lessened in that field, in that line of commerce. And when I say lessened, it is not just lessened, it is substantially lessened. Lessened as the courts have said and as the Con-

gress said to a degree that would injuriously affect the public. As the courts have said, "have brought it measur-

ably closer to monopoly power."

Now, what is the "measurably closer" so far as ACSR is concerned. What has the Government proved. The Government, so far as ACSR and all aluminum cable bare is concerned, has proved that in 1958, the year before the [fol. 1096] acquisition, Alcoa—would you look, your Honor, at Government's Exhibit 435, which is the second chart in the notebook that the Government handed you.

The Court: I have it.

Mr. Bergson: Now, in ACSR and aluminum cable bare in 1958, the year before the acquisition, Rome Cable had three tenths of one percent of the market. Alcoa had 32.5 percent of the market.

In 1954, which doesn't appear on the chart but which is in evidence as a result of cross-examination of Dr. Martin, Alcoa had 48.4 percent of this market.

In 1960 after the acquisition Alcoa and Rome together

had 30.7 percent of the market.

Now, how the addition of this infinitesimal share of the market can be claimed to have brought Alcoa, which was on a decline and a steady decline for a period of six years and the decline has continued since the merger, measurably [fol. 1097] closer to monopoly power or substantial lessenting of competition within this line of commerce, defies the imagination.

The Supreme Court in a Section III case, this is Section III of the Clayton Act, it uses the same language, substantially lessening competition and tending to a monopoly, this is the inclusive dealing provision where the courts have said that the test is one of quantitative substantiality, which is numbers and not qualitative substantiality which is the test in Section 7 cases, where you consider all of the factors in the industry, have said even in a Section III case that one tenths, that one percent of the market is so infinitesimal that the court would not be concerned with it.

Now, one of the big arguments that the Government has made here is that the integrated companies have gained by three tenths of one percent. Why they lump the integrated companies together I don't know, because the integrated [fol. 1098] companies compete like mad against one

another, and there is no evidence in this case to establish

anything to the contrary.

The share of the independents has gone up since the merger. Not only that, your Honor, but two of the independents sat here on the witness stand and said that they have plans to double their capacity.

Now, I submit, your Honor, that you don't need anything more than that to show that there has been no substantial lessening of competition or any, to use the quote correctly, the language of the statute, "may substantially" and "may" is used in the term reasonable probability that it

will.

And in the face of testimony of every single government witness, not our witnesses, the Government witnesses who were making ACSR, in the face of their testimony that this merger hasn't hurt them, I don't see how it is possible to hold that there has been any reasonable probability that [fol. 1099] competition will be substantially lessened in this line of commerce. We can put evidence in, but it isn't going to change the picture. We will emphasize it. But on the basis of the record before you now. I don't see how it is possible to hold, and this is not a question, I don't think they made a prima facie case, but here it is not a question of a prima facie case, it is a question of your construing the evidence that is before you and determining whether or not in the light of that evidence you believe that there is a reasonable preportderance of the evidence that this would happen. I don't think it is possible for you to make such a finding on the basis of the record.

Now,—I think that is all Γ need say about ACSR and all aluminum cable.

The Court : Yes.

Mr. Bergson: Ou the next government line of commerce, insulated aluminum wire and cable products. It is our posi[fol. 1100] tion, I think it has been demonstrated in the evidence before you, that the area of effective competition here is not insulated aluminum wire and cable products, that it is insulated wire and cable products, both copper and aluminum. The Government's own expert, Mr. Fosdick, showed that in overhead distribution a covered product is used. That copper occupies over 20 percent of the field on, new construction, completely ignoring replacement. Com-

pletely ignoring replacements. Every company, every witness that the Government put before you were witnesses who testified that their machinery could be used interchangeably with minor and inconsequential effort merely by changing the lubricant and wiping the dies clean. That you make either copper or aluminum products. Interchangeability is one of the most important things in determining a line of commerce.

The Court: The Government disputes that.

[fol. 1101] Mr. Bergson: The Government disputes that, but it hasn't proven it. We have proven through the Government's witnesses that there is complete interchangeability.

You mean they dispute the fact of interchangeability?

The Court: No. If I understand it right that goes back pretty much to the Cellophane case; doesn't it?

Mr. Bergson; No. No. It is interchangeability in manufacturing processes.

The Court: Oh, I see.

Mr. Bergson: Now, on the question of interchangeability of machinery, this has been an important factor in Section 7 cases. In the Brown Shoe case, which the Government won in the district court and which is now on appeal in the Supreme Court, the defendants urged that there should be separate lines of commerce for low-priced, medium-priced and high-priced men's shoes; low-priced, medium-priced, high-priced ladies' shoes. The Government said [fol. 1102] that is a lot of stuff. You can make low priced shoes and high priced shoes on the same machinery. The machinery is completely interchangeable. All you have to do is use better goods and you get high priced shoe:

When the Solicitor General argued the Brown Shoe case in the Supreme Court he relied most heavily on that argument. When the court decided the Brown Shoe case—and we have quoted the language in our brief—the court said there is no such thing as medium; no such thing as a line of commerce for high priced shoes or low priced shoes because everybody knows that the same machinery can be used for making both.

Well, you and I know when a person wants to buy a pair of shoes he is either in the market for a pair of high priced shoes or a pair of low priced shoes. If you are going to spend thirty dollars for a pair of shoes you don't go into a store that sells five dollar shoes. Nevertheless, the Court [fol. 1103] court held and the government urged that the interchangeability of machinery was sufficient to bring them all within the same line of commerce.

Now, there wasn't a single witness except the witnesses who testified on the little fine wires and said that the wires may break when they draw them down to size, whatever it was, 36 or 58, there wasn't a single witness, including Mr. Morley, this morning, who testified that the machinery was not interchangeable. On the contrary every one of them testified that it was.

Now, the other case where interchangeability came up was in the Bethlehem Steel case, and the defendants there urged interchangeability. And the court said, "No. No." But why did it say no. "The evidence establishes" said Judge Weinfeld, "that the defendant's production flexibility or mill product line theory is indeed pure theory." [fol. 1104] Well, if the defendants didn't meet, the factual issue, of course. But we have met that factual issue of changeability without calling a single witness of our own to the witness stand.

Now, here our products each have exactly the same end use. Nobody has questioned that. Everybody has testified that copper line wire does the same job as aluminum line wire. Everybody has testified that copper triplex does the same job as aluminum triplex. They testified that aluminum is in the ascendancy now because of a price differential. But there is still on new construction 22 percent on copper and in old construction there is no evidence adduced whatsoever, by the Government.

So it is our contention that the Government has not established that insulated wire and cable can be a separate line of commerce.

But we go further than that. We say let's assume, and [fol. 1105] I assure you we make that assumption solely for the purpose of argument, that aluminum wire and cable insulated does constitute a separate line of commerce. Has the Government shown any substantial lessening of competition? That there is a probable substantial lessening of competition in the insulated aluminum wire and cable

line of commerce? But again all you have to do is look at the Government's own charts.

In 1958 Rome and Alcoa combined had 16.3 percent. In 1959 it had, they had 16.6 percent; and in '60 they had 14.8 percent.

But then you got to look at this together with the other Government's chart which they call the concentration chart. Now, that chart I think on insulated is Government Exhibit 440.

The Court: Yes.

Mr. Bergson: That is Chart 7. In 1958, the year of the acquisition, this is ignoring the fact that they again-now [fol. 1106] how the Government does this I don't know, or how it can make the assumption that the integrated companies don't compete with one another and lump them all on one side and the non-integrators on the other, but even taking that assumption, that the non-integrated companies had 34.6 percent. But that included 7.4 percent of Rome, because Rome was then non-integrated. So in order to make a comparison with '59 and '60, you have to subtract that 4.7 percent and you get 29:9 percent.

And since the acquisition the share of the independents so-called has gone from 29.9 in '58 to 31.9 in '59 and 32.7 in '60.

Does this demonstrate a substantial lessening of competition?

[fol. 1107] Now, Mr. Melchior is going to say you have to look to the future. I say that the past is prologue and it is pretty good evidence of what will happen in the future.

The Federal Trade Commission, as I pointed out in my opening argument, has said the best way to determine what might happen in the future is to see what has happened in the past:

Now of this case was tried, or had been tried on April 1, 1959, then we would have had to speculate as to what might happen. But we have two years of experience here, there is nothing to indicate that the trend is any other way. and I submit that on this basis, your Honor, there is no evidence of a reasonable probability that competition will be substantially lessened even in the line of commerce that the Government contends for and which we do not admit.

This completely also overlooks the fact, as I pointed out

before in arguing for the broader line of commerce, that everyone of the Government's witnesses who do not make [fol. 1108] aluminum, said it would be easy to make, it would be easy to make the aluminum product if the price were right. They don't want to go in it because there isn't enough profit right now.

Now, one of the indicia of monopoly power is the power to raise prices and be able to make it stick. Well, if people can come into an industry, if you raise a price to a margin they think is profitable, then you have no monopoly power or no tendency to monopoly power because the definition of monopoly power is the ability to raise prices at will, or the ability to exclude competitors at will.

But here we have copper company after copper company—not all of them appeared on the witness' stand, there are many, many others who could come into this market at the drop of a hat, if anybody tried to exercise monopoly power.

Now, who has been hurt by this merger? Everybody who testified said he hadn't been hurt. Those who had [fol. 1109] some qualifications in the copper field said it was because they had to compete price-wise. Who gains by competition price-wise? The public. And the public and protection of the public interest is the ultimate objective of the Anti-Trust Law.

The Government in its brief said that the elimination of Rome took out of the market a vibrant, vital factor in the production of aluminum products which would help stem the tide of price squeeze that they have talked about. They haven't shown any evidence of that, they haven't even offered any evidence on that.

So I think that so far as insulated wire and cable is concerned, what our position is, that aluminum cannot constitute a separate line of commerce, and I think we have established that in the Government's case, that even if there were such a line of commerce, the Government has not established by a preponderance of the evidence that there has been or that there is a reasonable probability that there will be a substantial lessening of competition, [fol. 1110] and therefore, I think that their proof fails on that line of commerce. And if it fails on the insulated aluminum wire and cable line of commerce, it fails a fortiori

on the insulated wire and cable line of commerce, including both aluminum and copper.

And their own charts, your Honor, on that, show that the percentage of the market enjoyed by Alcoa and Rome, and even with Rea, in the value of insulated shipments of covered wire and cable was .3 per cent for Alcoa, 1.3 per cent for Rome, 1.3 percent for Rea Magnet wire, or a total of 2.9 per cent, which was the entire total of the amount that they thought was insufficient to include in their charts on aluminum wire and cable. So I think that if their case must fall on insulated wire and cable products, and because of what I said, their case on aluminum and insulated wire, and cable falls too, and that there is no proof in this record, absolutely none, that there is a reasonable probability that [fol. 1111] competitors will be harmed, that customers will be harmed-they didn't put any evidence in on that, not a single witness, not a single consumer of these products appeared as a witness to say that he had been harmed by this acquisition or that the public has been harmed.

Now, I submit, your Honor, that that disposes not only of aluminum wire and cable, insulated, but wire and cable, insulated, whether aluminum, or copper, or their broad lines of commerce including all the products, all aluminum on the one had or all aluminum plus all copper on the other hand.

Now, on the bare copper, which apparently is not anybody's line of commerce, I am not sure of that, bare copper wire and cable—that on bare conductor wire and cable the Government has introduced no evidence whatsoever of effects or even tried to introduce any evidence of effects on that line of commerce. Their entire proof on that line of commerce is a statistical chart, which is Chart [fol. 1112] 452, Government Exhibit 452, their Chart 17, which shows Alcoa with 10.3 per cent of the market and Rome was 2 per cent of the market. They have introduced no evidence as to what has happened since the merger. They are relying here solely on numbers, and they are are relying on the fact that Alcoa had 30 per cent of the bare, or whatever it was, 32 per cent of the bare ACSR and all aluminum cable tobring Alcoa's total of the broad line to 10 per cent.

Now, I submit, your Honor, that there has been a com-

Now, I think that covers the conductor wire and cable lines of commerce.

Now, another line of commerce that they have relied on-I beg your pardon, my partner advises me I forgot to mention service drop. Service drop, as you head the witnesses say, is insulated line wire twisted around a neutral messenger, according to the Government, into a triplex cable. This is just a single product designation in the line of insulated wire and cable. Now, here the Government [fol. 1113] boldly puts its chest forward and says service drop cable, copper and aluminum, is the line of commerce. Well, most service drop cable of this type is in aluminum, but there is a lot of it that is in copper. But to extract and belatedly, I might add, because, if Your Honor will recall, service drop appeared in this case as a line of commerce only after our pre-trial conference in Syracuse, when the pretrial schedule was prepared, the Government has extracted one product from the range of insulated wire and cable products which anybody in the business of insulating wire and cable products of this kind, as all these witnesses testified to, could make, and said this is a separate line of commerce.

Now, I submit, your Honor, that this may be a product because it is called service drop, but when you are talking about a line of commerce you can't take one product that could be made by anybody making the entire line, or making part of the line and isolate it and say this is a separate line [fol. 1114] of commerce. And you have got to apply the service drop cable, and I am accepting service drop as they have defined it now, because I haven't put our case in yet, but as they define it, service drop is triplex. They have not established that this single product in the range of insulated wire and cable products for overhead use by utilities, if you will, which is what the Government has been talking about so much in this case, can properly be segregated from other insulated wire and cable products for use by utilities in the secondary distribution of power.

Now, another line of commerce, aluminum ingot and rod, used in the production of aluminum conductor wire and cable. You have heard a lot of talk about E.C. grade aluminum. The Government's witness, Mr. Harvey, vester-

day said that E.C. grade aluminum was a designation, that 80 per cent of their production could be put in, could qualify as E.C. grade aluminum. E.C. grade aluminum is nothing but a designation. . It is one of the products that is produced by the smelters. If there is no demand for E.C. pig, so-[fol./1115] called, they make a different alloy; if there is a substantial demand for E.C. pig, they could make it all in E. C. pig. But the Government, playing its numbers game in attempting to contract the market says that the line of commerce is pig and ingot for electrical conductor purposes, and they say as a result of that Rome Cable Company which produced E.C. grade rod and bought aluminum pig and ingot, they don't say how much of it was E.C. grade, they just said aluminum pig and ingot, if you remember that chart, was substantially foreclosed as an outlet for other suppliers of pig and ingot, and here they bleed for the primary producers, the poor primary producers have lost a market for a few million pounds of E.C., of pig and ingot to Rome Cable which Alcoa had been supplying before the merger anyway, and the Government's charts show that to a very large extent, not completely, and say that this foreclosure of miniscule percentage of the production of pig and ingot in the United States [fol. 1116] is a substantial foreclosure.

I submit, your Honor, the facts just don't support this as they have been put in evidence.

Now the Government says also that Rome was a supplier of rod, and they say that competition between Alcoa and Rome in the supply of E.C. aluminum rod has been lessened. You remember we went through that chart, and I would like to invite your attention to it again, although I hate to fumble for these things—it is Chart 13, it is Government Exhibit 448. Rome was the supplier of E.C. redraw rod from 1954 through the first quarter of 1959 to the extent of the numbers on the chart. But if you remember, your Honor, we brought out on cross-examination that most of that rod was sold for non-E.C. purposes, it was sold to the Aerofin Company which used it in the manufacture, I think, of air conditioners.

Now, I don't know whether that fact appears of record, but it does appear of record that it was sold for non-E.C. [fol. 1117] purposes, because Dr. Martin testified that he

knew that the Aerofin Company did not make electrical conductor. You will recall that.

Now, you compare what was actually sold for E.C. purposes, which was 15,000 pounds in 1956, 77,000 pounds in 1957, 15,000 pounds in 1958, 14,000 pounds in 1959—in the first quarter of 1959, and 15,000 pounds in the second quarter of 1959—

The Court: Where are you getting those figures from? Mr. Bergson: I am subtracting the figures that were used for Aerofin which we brought out on the record and I wrote them on my chart.

The Court: All right.

Mr. Bergson: And we compare those figures with Government's Chart No. 10, and here the Government has, given the sales of E.C. redraw rod in 1956, 1957, '58, and '59 by the integrated producers, they forgot about Southwire who testified that they sold rod; they forgot about the [fol. 1118] Canadian they just picked the domestic producers because people across the seas don't count in our economy according to Mr. Melchior, that it is improper to even think that a domestic wire and cable manufacturer might buy rod from a non-integrated producer or from some foreign source, forget about them, just take the figures that are included here and, incidentally, General Cable's rod production is not included here because this is the integrated companies, but General Cable isn't integrated for the purpose of this chart, it is only integrated for the purpose of some of the other charts. But Rome's percentage of the sale of E.C. redraw rod for electrical conductor purposes was so small you could hardly figure it. It is in the hundredths of a per cent, or tenths of a percent at the most, certainly so insubstantial as not to give rise to a reasonable probability that competition will be substantially lessened.

Of course, Rome isn't going to be selling in competition with Alcoa any more, but this is true in the case of every [fol. 1119] acquisition, and as your Honor pointed out, Section VII doesn't outlaw every acquisition, if it did the Court would be flooded or there wouldn't be any acquisitions. The only acquisitions that are outlawed, as your Honor cogently observed, are those where there is a reasonable probability there will be a substantial lessening of

competition or tend to create a monopoly. But the percentages here are even smaller than the percentages in the Tampa Electric case, the Section III case that I referred to earlier.

The Court: Didn't one of these witnesses buy foreign ingot—yes, I think it was foreign ingot.

Mr. Bergson: Yes.

The Court: And made E.C. rod out of it?

Mr. Bergson: Right. And he also said that the foreign ingot he bought was not so-called E.C. ingot, and Mr. Harvey testified that the stuff he ships for E.C. ingot is just a high purity ingot.

I will tell you, there is no evidence in the record on this, [fol. 1120] your Honor, and I am trying to confine myself

to the record.

The Court: Well, go ahead.

Mr. Bergson: Because I do think this motion should be granted, and if you don't disqualify me for going outside the record, E. C. aluminum, E.C. grade aluminum is an alloy or is a form of ingot which has added to it a very, very small quantity of boron. The purpose of putting boron in is to take out of the metal those impurities—the impurities clinging to the boron—which impede the conductivity of the metal. Any aluminum can be used to conduct electricity, but you want to get as high conductivity as you can. So by the addition of boron in some instances, by other processes in other instances, you can get a conductivity of aluminum of what they say is 61½, 61 to 62 per cent.

Ifol. 1121] Now, on the basis of this record, and the only supplier of aluminum that the Government had here was Mr. Lawrence Harvey, of the Harvey Aluminum Company, who testified that the foreclosure to Rome as a source for his pig and ingot didn't hurt him at all, that horizontally or vertically in the government's line of commerce, EC aluminum pig or ingot, which there isn't, there is no such line of commerce, or in EC redraw rod, there has been no showing whatsoever of a reasonable probability that competition will be substantially lessened or that there is a tendency or that there may be a tendency to amonopoly.

Now we come to conduit. The arguments that are made so far, or to a large extent that are made so far as insulated wire and cable is concerned is the same, so far as the line of commerce is concerned. Interchangeable. Here we have product interchangeability as well. I don't know about manufacturing interchangeability. There is no evilfol. 1122 denee of manufacturing interchangeability. But there is substantial evidence and no evidence to the contrary, no credible evidence anyway to the contrary, that aluminum conduit, rigid conduit, I am talking about rigid conduit here, constitutes a separate line of commerce. This is to our disadvantage to take this position. Because if aluminum conduit were a line of commerce, Rome didn't make any before the acquisition and Alcoa did. And therefore where was the lessening of competition?

Now, the Government will argue, I assume, that Rome could have gone into the conduit business, the aluminum conduit business. But the only evidence in the record as of this moment is that Rome couldn't have gone into the conduit business because the Government's witness, Mr. Resnick, yesterday said Rome didn't have extrusion press. Rome didn't have this and Rome didn't have that and [fol. 1123] couldn't have gone into the conduit business, aluminum conduit business. So it would be to our advantage, contrary to the attempt to take the position that aluminum conduit is a proper line of commerce. We can't conscientiously do that. It is an incomplete and utter disregard of the facts. The facts are that Rome made steel conduit before the acquisition. Alcoa has never made steel conduit. So Rome was in steel and Alcoa was in aluminum. No evidence that Alcoa would get into the steel business. There is no evidence that Rome could get into the aluminum business. There obviously would be not only substantial lessening of competition but no lessening of competition at all:

But we stated in our brief, and I don't want to put a halo around my head or anything like that, but we couldn't conscientiously take the position that aluminum and steel didn't compete. Because they do. And the witnesses who were here, with the exception of Mr. Resnick, who wouldn't [fol. 1124] recognize the existence of steel conduit except under cross-examination, has stated that rigid aluminum conduit and rigid steel conduit competed. They performed the same function. One witness, Mr. Aymes I think it was,

said that one of the differences between the two that might be a separate line of commerce was that one rusted and the other corroded. But I don't know the difference between rusting and corrosion. That is what rusting is, is corrosion. But that is neither here nor there.

The fact of the matter is that they do compete and the record I think shows that unequivocably. Mr. Harvey testified that it was the steel conduit prices that drove the aluminum conduit prices down. That when he had to reduce his price list, he was reducing it to meet the price of steel conduit.

There is no evidence—Mr. McNair, of the Hazelwood Company, testified that aluminum and steel competed. He [fol. 1125] said he liked some of the properties of aluminum better. Of course he would. He sells it. But he meets competition in steel in the marketplace every single day.

Now, what is the situation in steel conduit. In conduit. I beg your pardon. The Government has introduced a tabulation and for the purpose of this argument I am forced to accept the validity of the Government's chart on conduit. This is Government Exhibit—I don't have the exhibit number on my copy.

Mr. Mahaffie: 455.

Mr. Bergson: 455. I think it would be Chart No. 20. Now here the Government shows on this chart, which they mentioned as a result of the letter that they received on February 1st and which was introduced in evidence today from the Bureau of Census raising the universe from 120,000 to 125,000, that of the conduit market Alcoa had 3.5 percent and Rome had 3.5 percent. As a percentage of [fol. 1126] the total industry. I submit that this is not significant.

I am not going to allude to the fact that we think the chart is incorrect. But if we have to come to that we will meet it in our own case. But the Government has introduced no evidence in the conduit line of commerce other than these figures. Because they have spent their entire case trying to prove that aluminum and steel were separate lines of commerce. And there is no evidence in this case at this date as to what effect the adding of these two percentages together has on competition in the field of conduit.

And the evidence, I submit, your Honor, is woefully lack-

ing. Not lacking, it is non-existent.

The Government has alluded in this case to a superior sales organization and the joint sales of wire and conduit. They have talked about it. I don't think they proved anything by it. But the Government has shown through the [fol. 1127] only witness who ventured a guess that Alcoa and Rome's conduit, at first he said they had two separate sales forces and then when we pinned him down it is one sales force, the sales force that Rome had.

The Court: Mr. Bergson, on that chart, 455, it states the value of shipment of conduit in the United States as percentage figures. Is that limited to aluminum conduit?

Mr. Bergson: No, sir.

The Court: Does it include both aluminum and steb!?

Mr. Bergson: Yes, sir.

The Court: Well, the question of course that comes into my mind, it probably might better be asked of Mr. Melchior than you, if you include the two of them in your chart how is it, if I understand it right, the Government claims that the aluminum conduit is a single line of commerce?

Mr. Bergson: Well, they have been trying to ride both [fol. 1128] horses in this case all the way down the line, your Honor. They have two lines of commerce. Do you

have that brief before you?

Mr. Melchior: Your Honor, there is a separate tabula-

The Court: I am not going to make a lot of concessions here. I am not going to answer your question.

Mr. Bergson: Well, you don't have to. I will show you the brief. Line of Commerce No. 10 is conduit, aluminum and steel. That is what this chart relates to. Then they have a separate line of commerce they call aluminum conduit.

Now, they spent their time in this case trying to prove there ain't no such thing as a line of commerce that they allege here. In any event the evidence it seems to me shows that so far as the aluminum conduit, let's assume that contrary to the fact that they proved that aluminum conduit is a separate line of commerce. They also proved [fol. 1129] that aluminum conduit too, by and large, is a brand new industry.

Now, it is true, and I don't know whether the record shows this or not, but I will say it contrary to my own interest, that Alcoa began making aluminum conduit in the 1920's—1922 I believe it was. But they never sold much of it. Well, yes, what was used as conduit.

In 1958 when Mr. Hazelwood got into the business as one of the pioneers there were a few companies in the business. Kaiser had gone in, according to government witnesses. Subsequently, according to Mr. Harvey, Marvey went in. Channel Master went in in 1960. Aluminum Rigid Corduit went in in 1960, went out in 1961. But this is a brand new industry. And the entry into this industry from the time that Alcoa started in it in 1922 up until 1958 was nil. Since that time there has been entry into this industry.

Now, how the Government can claim now that there is a [fol. 1130] substantial lessening of competition in this new and surging industry, if there is such a line of commerce, is beyond me.

Sure, they put in evidence saying the independents can't compete against the big boys because we can't consign stock, and we don't have wire to sell with our conduit and therefore we cannot sell and so forth. But they are selling it.

Mr. McNair said his sales in 1961 were up over 1960; and his 1960 were over 1959. The only one who was complaining about the conduit business was the man who went into the conduit business on a shoestring and a whistle.

I submit, your Honor, that in the aluminum conduit line of commerce, if such there be, there has been no showing of a probable lessening of competition. Quite the contrary.

Now, I think I covered all lines of commerce.

The Court: Yes.

[fol. 1131] Mr. Bergson: I don't think I can overemphasize my position here, that on the basis of the evidence that has gone before you that in any of the lines of commerce that the Government has alleged, they have not shown a lessening, that in any line of commerce there may probably be a lessening of competition or a tentlency of monopoly.

And there is one thing I have not covered, and I would

like to finish and cover it and be complete. We still have

the section of the country.

The Court: That is just what I was going to ask you.

Mr. Bergson: There are two sections of the country
alleged for conduit. The United States as a whole and the
so-called 11-state western market.

What constitutes a market? A market is not a locality. A market is a place where huyers may buy and sellers may sell. Now, of course, it is true that in the eleven west-[fol. 1132] ern states, the people in the eleven western states buy in the eleven western states. But that does not constitute the eleven western states as a market for the purposes of Section 7.

What constitutes a market for the purpose of Section 7, is that there is an area where there are buyers and there is an area where only certain sellers can reach the market.

Now, in this case we have had testimony from the Government's own witnesses that the only conduit plants located west of the Mississippi are Mr. Harvey's plant and Rome Cable's plant at Torrance, California. Both of them in Porrance, California.

Every other conduit manufacturer in the United States is located east of the Mississippi River. And Mr. Resnick shipped his in by rail. Carload. Right to the western

market. And he sold in the western market.

Mr. Harvey testified that his sales were mainly on the [fol. 1133] west coast. And who did he say was his principal competitor. The steel manufacturers, all located east of the Mississippi. He mentioned Youngstown, in Youngstown, Ohio, which he put west of the Mississippi first. He mentioned Triangle Conduit, which is in New Jersey, Because the witness from Triangle testified that that is where it was. And all of the conduit manufacturers who have national distribution sell in the eleven western states.

The Court: Very frankly, I don't remember any particular evidence that even establishes this eleven western

states.

Mr. Bergson: Well, there is some evidence.

The Court: Yes

Mr. Bergson: In some of the documents which you have not read. And in some of our documents we talk about the eleven western states.

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Now, I don't want to go beyond the record, but we are [fol. 1134] talking about our sales in that area. There is nothing in those documents upon which a finding can be based that from a competitive standpoint the eleven western states constitute a separate market, because if they

did we darn near would have 100 percent of it.

The documents show that we have 18 to 20 percent. Rome had 10 to 20 percent. That Rome had 10 to 20 percent of the sales in the eleven western states. But these documents were sales documents. They were to indicate where the selling areas were. They don't prove that because of the words "eleven western states" are used in them that the eleven western states constitute a market for Clayton Act purposes.

And there has been no evidence by the Government. And every bit of evidence is to the contrary, that there is no natural barrier, either freight or otherwise, to prevent a company on the east coast of the United States from [fol. 1135] competing with a company on the west coast of

the United States.

Mr. Harvey said his principal price competitor was Youngstown Steel. Certainly not within the western state area.

You just can't say that because people buy in a certain area that that constitutes a market for Clayton Act purposes.

Utica, New York would be a market then for Clayton. Act purposes. And anybody who had a factory outside and was selling in here wouldn't be part of the market.

If the XYZ Plumbing House which was located in Utica, New York sold in Utica, New York, doesn't it have competition from Syracuse, from Rome! I don't know anything about the geography around here, but it seems quite obvious that you just can't say that because a buyer is physically located in a place that that constitutes the market.

[fol. 1136] What constitutes a market is the ease in which the sellers can factually reach. And this is what all the cases hold. And there is no evidence in this case that other sellers cannot reach that market.

Now, on the basis—I have talked testimony primarily. The Government has put in evidence some 400 documents.

Most of them are old; many going back to 1951, '52. Many of them are speculative; many of them are estimates. Of course you have to consider them in evaluating a motion to dismiss.

But I submit, your Honor, that there is nothing in those documents which would change the effect of this merger. And that effect I submit is not the effect charged by the Government.

The Government I think on the disputed lines of commerce has failed miserably to meet this burden of proof. I think it has failed miserably in its burden of proof to establish sections of the country, and I think it has failed [fol. 1137] for more miserably in its efforts to establish that the effects of this acquisition may reasonably be expected to substantially lessen competition and tend to create a monopoly. And I therefore urge, your Honor, to grant the defendant's motion to dismiss.

The Court: Take a short recess.

(At this point a recess was taken after which the trial was resumed.)

[fol. 1138] The Court: All right, Mr. Melchior, what are you going to do with that tough argument of your opponent?

## COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Melchior: I hardly know where to begin, your Honor, there are so many points I should touch upon.

I want to make sure that the Government makes it clear, your Honor, that if there may be an intent on your part to dismiss this action we would like to reserve the opportunity to marshal all the facts we have in the record at some length, perhaps not necessarily this afternoon, but at a later date.

The Court: Well, in answer to that, there's no question about it. I think he made a rather strong argument. I would be inclined to give the Government the best of it on any question that is reasonably close.

Mr. Melchior: Yes, I would think in a motion for dismissal, I would think the Court should, and I am sure it does realize that there has been introduced into evidence. [fol. 1139] in this case a substantial volume of documentary

evidence which plaintiff has really not had an opportunity to analyze for the Court, and we would respectfully urge that it be given this opportunity at an appropriate time.

Now, I think under a motion to dismiss there is an extremely heavy burden facing the defendant. In order for the action to be dismissed, it would be necessary that the defendant show that there is no reasonable probability of a substantial lessening of competition in any of the lines asserted by the Government, or any of the sections of the country asserted by the Government.

The Court: That isn't the law, is it? You said the de-

fendant would have to show---

Mr. Melchior: The moving party would have to show. The Court: The burden is always on the plaintiff. It doesn't shift.

Mr. Melchior: On a motion to dismiss.

The Court: But you don't shift the burden of proof on

[fol. 1140] a motion to dismiss.

Mr. Melchior: No, but we assert that before it can be dismissed, after the Government's case is in, that it must be shown that there has not been a substantial lessening in any line of commerce in any section of the country asserted by the Government.

The Court: You have to show that there has been. If

they say nothing-

Mr. Melchior: In order to prevail, plaintiff must show it. The Court: And his motion is in substance a motion to dismiss for failure of proof.

Mr. Melchior: We have asserted ten lines of commerce. The Court: Yes, but I want to clear up this other, I think you misspoke yourself. That is not my understanding of the law. The burden is not on the defendant to show that there is no substantial lessening, the burden is on the plaintiff to show there is.

[fol. 1141]. Mr. Melchior: Maybe I should phrase it this way, in order to secure dismissal, defendant must show that the plaintiff has failed to demonstrate—

The Court: That's right.

Mr. Melchior: Now, I think at the outset, I am not entirely sure how to answer Mr. Bergson on all the points in the shortest and briefest way, but it would seem to me a good starting point, and this was the starting point I

used in our opening statement, would be to distinguish again between the Clayton Act and the Sherman Act insofar as the question of impact is concerned. I will reserve my discussion of lines of commerce to a little later, because I think this is important.

## ARGUMENT ON BEHALF OF GOVERNMENT BY MR. MELCHIOR

In the first-place with respect to the question of impact, defendant continues to use words which mean actuality. He does not seem to use the phrase "reasonable probability." He does not seem to realize that it is the Government's burden only to prove that there is a reason-[fol. 1142] able probability of a lessening of competition. He talks in terms of monopoly—this does not show monopoly; occasionally the phrase "trend to monopoly" creeps in, but we have the word "monopoly" mentioned and we have the word "restraint" mentioned, and the word "restraint" is not in the Clayton Act, and I think it is essential that the Court realize this distinction.

I also think that the word "incipiency" is very important in this connection. The legislative history of the Clayton Act, and particularly the 1950 amendment, pointed out that in order to show a Section 7 violation it was not necessary to show a full fledged restraint. The purpose of Section 7 and the purpose of the whole Clayton Act is to nip in the bud, as it were, I believe those were the words used, or to prevent in their incipiency those activities and those conditions which would ripen at some date in the future [fol. 1143] into full fleged Sherman Act violations.

Now, I think I should emphasize, and I believe the Court did itself emphasize this at the beginning of this session, we do not assert and we do not try to prove by any of our witnesses that there is any agreement or conspiracy in violation of Section 1, or 2 for that matter, of the Sherman Act. That has not been our purpose at all. As I indicated many times during the hearing, my purpose was to point out what market conditions were and how these market conditions aggravated the economic position enjoyed by the non-integrated fabricators and how, against this economic background, this merger is a very serious thing from a competitive standpoint.

Nor is it the government's purpose to try and prove that Alcoa is still a monopolist in the field of aluminum. That issue was settled many years ago, and it is very true that since the middle 30's when Alcoa did have 100 percent [fol. 1144] or thereabouts in the field of aluminum, their position has been declining. But I think I should point out to the Court, and this you can take judicial notice of, that Alcoa's position in the whole field of aluminum has been declining for several reasons, one of which of course was a government monopoly suit and the relief we secured therefrom. Another one was the fact that during and after World War II the federal government poured millions of dollars into installations for the production of primary aluminum and disposed of these in many cases at great losses to other companies who eventually came into the industry as printary producers themselves. These buildings were paid for by the American taxpayers and these buildings now have been used by these other parties to produce aluminum and, inso facto, to reduce the strong monopolistic position enjoyed by Alcoa.

Now, we have this what I could describe as an ogolopolist [fol. 1145] condition in the field of aluminum. This is true. Control of the industry by a few in primary aluminum. The Government is still interested in getting more competition. It has come along in that respect. Instead of three we now have six. One of the individuals who testified from one of these corporations who came into this business through government assistance, he began as a small machine shop and now he is the fourth largest primary producer, I believe.

Now, I don't think this decline in Alcoa's share of the total market can be attributed to any desire on the part of Alcoa to have a smaller percentage. These are historical facts of the situation which brought this condition about.

Now, I think I should also state that it should not be the purpose of this Court or the law to permit Alcoa to halt this decline in its position which has been paid for by the American taxpayer by now giving them an im-[fol. 1146] munity under Section 7 to acquire a company of the size and position of Rome so that their decline can be halted and levelled out, and I think this is very important.

Now, the third point I think I should make is that during the testimony and during the proceedings in this case it has not been our purpose to try and show that either Alcoa or any of their integrated producers and competitors for that matter, any of the non-integrated competitors have been in violation of any federal law. Our only charge in this case is that this merger, this acquisition by Alcoa of Rome is in violation of Section 7 of the Clayton Act.

Now, I should also like to emphasize, if it would please the Court, what the Court's function is in a Section 7 proceeding. The Court has expressed some concern with the great volume of evidence and proof that seems to be required in some of these Section 7 cases, and I can express sympathy for the job faced by the Court in analyzing all [fol. 1147] this data. I think we should point out that in this particular case the Government has actually streamlined its case much beyond that in many of the other Section 7 cases. I think the parties have cooperated to a great extent, and the Court has been very industrious in urging us to bring this case down to proper proportions. I think the fact that we have less than 500 documents in this proceeding, and that we have completed the Government's case in something like six or seven days, indicates that there has been a studied attempt on the part of all parties to bring this case down to proportion.

Now, what is the function of the Court in this situation? It is not the function of the Court as we see it to find that actual damage to competition has resulted. We do not allege that. There might have been some damage. As a matter of fact, some of the witnesses seemed to indicate that they had been damaged or thought they had [fol. 1148] been damaged or may be damaged in the future. This is very unusual testimony in Section 7 cases.

I have some familiarity with most of the ones filed by the Government since the 1950 amendment, and I think this case is unusual and unique in that for the first time we have had quite an array of industry people who are willing to sit on the stand and state to the Court that they don't like this situation, they don't like market conditions and they don't particularly like the dominance exerted by Alcoa and the other producers. And I think they said that and they had to overcome quite a bit of personal reluctance to do this. I think the Court is quite well aware it is quite tough to have a small businessman come in a federal court and make statements which might appear to be against the industry giants, and this is one of the problems the Government faces in every one of these Section 7 cases. As a matter of fact in some Section VII [fol. 1149] cases we have given the case to the Court purely on documents, because we couldn't get a witness, we could not find a man that was willing to come into court and say words to this effect, so I think this case is unique in that respect.

Now, what is the duty of the Court in this situation? I think the Court of Appeals case, Crown Zellerbach against F. T. C. which was somewhat recently decided in the Seventh Circuit, and at the moment is the latest word from the highest court on Section VII other than General Motors-Dupont, which is the Supreme Court enunciation, states what the test of Section VII is, what the word probability means, and the Court stated: "The test as to whether the merger produced a reasonable probability that it would lessen competition or tend towards monopoly is not an easy one to apply because obviously—" and I underscore these words—"it involves in a degree the forecasting of the future."

Now, we submit, your Honor, that this is the function of this Court and this is the function assigned to this [fol. 1150] Court by the Congress, and this is one of the reasons we felt it necessary when we had our industry witnesses on the stand to ask them to conjecture, to assess, to evaluate, to predict what the result may be.

Now, there were substantial objections to our questions, but we feel it essential that the Court should have the benefit of the views of the men in the industry, the men closest to the firing line who would best know and best be in a position to advise the Court in this respect.

Then the quotation from Crown Zellerbach goes on:
"The wording of the State and the Legislative history
demonstrate that not every merger was intended to be
prohibited."

Now Mr. Bergson has made much of this. Mr. Bergson has seemed to indicate that it is the Government's position that all mergers are bad. Now, this, of course, is not the Government's position. The Government's position in this case is that the largest, aluminum company in the United [fol. 1151] States, fully integrated from the ground to the fabricated product, cannot acquire under Section VII one of the most substantial independent wire and cable producers in the nation, a strong, healthy company enjoying a reputation in its field.

The Crown Zellerbach quotation goes on:

"In fact, in drafting the amended statute in 1950, Congress made some changes designed to prevent any such conclusion. A mere possibility of a lessening of competition would not suffice; on the other hand, actual proof of injury to or restraint of competition was not contemplated, because the enactment was designed to go beyond the Sherman Act requirements of such proof and to furnish remedies more readily available. It is not a requisite to the proof of the violation of Section VII to show that restraint or monopoly was intended."

Now, there are many ways in which we could measure this acquisition against the prohibitions and oriteria of Section VII. One of the simplest would be to look to the [fol. 1152] language of the Congress and often quoted by the cases in this field, which indicates the type of acquisition intended to be prohibited. We submit that the elimination of Rome as a strong, healthy, independent factor in the field of wire and cable, its elimination by Alcoa on its face is sufficient to find this merger illegal. We submit it was not necessary to have presented this array of industry witnesses. We feel that under the law a mere showing of the size and importance of Alcoa and the size and importance of Rome, on those figures alone we feel that we would have met the test of Section VII.

The Court: Is there any case that ever held anything like that?

Mr. Melchior: I think the Bethlehem Steel case held precisely that. The Bethlehem Steel Case, if you will read the opinion closely, you will find that there was little in that case other than percentage share of the market. Now,

there was in that case, in addition, a showing of the full integration of Bethlehem, the full integration of Youngs-[fol. 1153] town, and there were several witnesses in that proceeding who testified as to difficulties they were having in one very particular narrow field, that field happened to be wire rope and rope wire, which a very small part of the empires of both Youngstown and Bethlehem. The Court in its opinion stated that the material facts in this case are undisputed, and he indicated that these facts have generally been determined prior to trial. The trial of that proceeding involved only one phase of that case, and that was the vertical phase. All the statistics involving the horizontal merger were all in and agreed to prior to the commencement of the trial, and the trial covered solely the vertical situation.

There was a motion for summary judgment in this case

and it failed.

The Court: Yes.

Mr. Melchior: Because the Court stated it wanted to give the defendant its day in court, but then in the opinion, the very significant statement is made that the facts in this case, material facts in this case, are undisputed, which [fol. 1154] indicates to me that the Court did not feel that the testimony of the witnesses at the trial was necessary to this decision.

Now, this is conjecture, of course, on my part.

The Court: But that doesn't answer my question. Is there any case that holds from the size alone there is a violation of Section VII? You made the statement that you thought that all you had to do would be to just show the statistics of these two companies and that would constitute a violation of Section VII. I am not aware of any such case.

Mr. Melchior: There is no case on that, Your Honor. As a matter of fact there are only three government cases, there are only three cases in which the government has litigated successfully, and none of these involve the situation where the Court was clear on that basis. I think there is language in the legislative history which would give rise [fol. 1155] to the argument that if the percentages are large enough that is all you would have to show. Now, we don't feel necessarily that in each of the lines of com-

merce we have urged here, that the percentages are large enough to win this case purely in percentages, but we feel, however, that we approach that in certain lines, but rather than risk the case on that alone, we felt that we should

bring in industry conditions.

I would like to refer the Court to this language in the House report which said, and it is an oft quoted phrase, and I don't like to repeat it, I will just read that part that I think is appropriate, it says: "Acquisitions of stock or assets have a cumulative effect and control of the market sufficient to constitute a violation of the Sherman Act may be achieved not in a single acquisition but

as a result of a series of acquisitions."

Then it goes on: "The bill is intended to permit intervention in such a cumulative process when the effect of [fol. 1156] an acquisition may be a significant reduction in the vigor of competition, even though this effect may not be so far reaching as to amount to a combination in restraint of trade," and so forth. It says, "Such an effect may arise in various ways," and here I think is the significant phrase in this proceeding, "Such as the elimination in whole or in material part of the competitive activity of an enterprise which has been a substantial factor in competition." Then it lists other reasons. We think in the context of this market and in viewing the size and dominance of Alcoa in the whole aluminum and aluminum products field, this elimination of Rome alone is sufficient to bring this merger within the terms of Section VII.

There has been substantial testimony and there of course is much in the documents to show the size and importance of Rome. I might cite a few statistics as to the appropriate lines of commerce. Mr. Bergson covered them but I would like to point specifically to the aluminum insulated [fol. 1157] and covered wire and cable line wherein Rome's 1958 share was 4.7 per cent of the market. In the field of service drop cable, where its share was 5.1 per cent of the market. This was the year immediately preceding the merger.

The Court: Let me interrupt you, Mr. Melchior. I am of the opinion that service drop cable is not a special line of commerce.

[fol. 1158] Mr. Melchior: Well, I think Mr. Bergson's

use of the term service drop was very significant. Our line of commerce—

The Court: Service' drop is just a name.

Mr. Melchior: I would like to explain what we think it is.

The material that we have alleged to be a line of commerce is service drop cable, not service drop. Now, I think there was brought out by testimony the difference between wire and cable. Now, we urge that our line of commerce, service drop cable, is that form of multiplex wire that is wound together and runs from the telephone pole to the house.

Now, there sometimes is used another product which is called line wire, and it runs down in two or three or four different and single wires. We think this is an entirely different product. It is a product that is being rapidly displaced by the new multiplex, and we feel our line of commerce is service wire cable, multiplex cable, often called triplex or quadraplex, and this is an important distinction.

I know it has been difficult for Your Honor to visualize these things without real exhibits.

[fol. 1159] The Court: I think I know about service drop cable, and also this wire. I know it. But what my problem is, it seems to me it is just another electrical conductor product. These wires are wound around a conductor; why should that be separated as a separate line of commerce?

Mr. Melchior: We separated it because under our concept of the case we have lines of products within lines of products.

The Court: I know you do.

Mr. Melchior: The same as defendant does, so I guess we agree in theory, we can have a line of commerce within a line of commerce.

The Court: I don't care what you people agree, it doesn't bother me, but what I am trying to find out is how is it— I don't care whether they agree to it or not, to me it is just simply another type of cable, if you want to call it that, it has a particular use—

Mr. Melchier: That's it, another type of cable, it has a particular use, and that is the very point, Your Honor,

that we urge is the reason it is a line of commerce. You see, we adhere to the peculiar uses and characteristics [fol. 1160] standard of it.

The Court: Yes, but you haven't got much characteristics in this thing. You have this service drop used generally, I suppose, as they have indicated, certainly that is the evidence and that is what I must go by. But it seems to me that it is just like an aluminum frying pan and an

aluminum pan that is not a frying pan.

Mr. Melchior: We think that not only does service drop cable have certain peculiar and unique characteristics which distinguishes it from other forms of aluminum and copper wire and cable, but we think that all insulated aluminum wire and cable has characteristics which distinguish it from all other insulated wire and cable, and we think thirdly that all insulated wire and cable, as a conductor, have characteristics which distinguish them from other products.

The reason we picked out service drop is because this is one particular very narrow line of commerce where we felt the damage would be most acute. If we look at the figures we find——

The Court: I haven't got'that far, I am not talking about [fol. 1161] the damage at all, I am trying to talk about whether it is a line of commerce, and I guess you answered it, you're depending upon its particular use.

Mr. Melchior: That's right, and its peculiar characteristics; it looks different than other wire and cable, it certainly looks different than power cable, it looks different

than ACR.

The Court: Certainly, but you put a different color insulation on it it would look different yet. So you can't go on those things. You can make it look different on the outside.

Mr. Melchior: I don't think the indust makes it look different because it wants it to look different, it has designed it in a certain way for a certain use, it sells at different prices than the other products and it has this peculiar use.

The Court: So do cheap shoes and dear shoes.

Mr. Melchior: Apparently the Court in that case felt that men's shoes could be distinguished from children's

shoes by virtue of the age or sex of the wearer, it didn't [fol. 1162] think the cost of the shoes was sufficient to set up separate lines. As a matter of fact, the Government did not urge in that case—

The Court: I don't want to get into a debate about that. Mr. Melchior: No. We feel on this line of commerce question, Your Honor, that I don't like to use the word substitute, but I will, we feel every product has a substitute and—

The Court: That is tantamount to saying every product is a line of commerce.

Mr. Meichior: I am working the argument the other way, that if every product has a substitute then there would be only one line of commerce, there is a substitute for everything, but merely because a product is a substitute for it and on occasion can be used interchangably with it does not in our view demarcate what the line of commerce is.

We felt Congress in drafting Section 7, and the Supreme Court in the General Motors-duPont case in interpreting the phrase "line of commerce" had as its idea to protect competition within lines such as this in their incipiency, [fol. 1163] they didn't want to just try to protect broad lines, they wanted to protect narrow lines.

The Court: I have read those histories, some of them in great detail, some of them narrow, and I am not going to write the history because you can find contradictions even in the history.

Mr. Melchior: I realize that.

The Court: There's no use going into that. What I am trying to find out is your argument, putting it concisely, is service drop is a separate item of commerce, separate line of commerce. Frankly, I have been a little doubtful about it, it is just another cable product with a conductor in it.

Now if we use every one of these different products as a separate line of commerce, I have just got the idea that Congress didn't mean that at all.

Mr. Melchior: I think we could urge a number of other lines of commerce in this case. As a matter of fact, Your Honor, I think—

The Court: I know you could.

Mr. Melchior: I don't think it is essential.

[fol. 1164] The Court: Why do you use service drop? That is my only question.

Mr. Melchior: Our reason for picking out service drop is because we felt the impact in that line may be greater than in the broader insulated line.

The Court: That is no reason at all. In other words.

you are choosing a line of commerce by its impact.

Mr. Melchior: No, we are saying-

The Court: That is just what you said.

Mr. Melchior: I meant to say that, Your Honor,

The Court: Do you mean to say that you can choose a line of commerce by working is backwards, finding the impact first and then deciding "there's a line of commerce"!

Mr. Melchior: We didn't do it that way.

The Court: But you just did tell me-let's take it slow. that you chose the line of commerce because of the impact.

Mr. Melchior: We selected it-

The Court: Now, I doubt if that is the right way of [fol. 1165] choosing or establishing a line of commerce.

Mr. Melchior: We decided that the line, insulated wire and cable, was an appropriate line of commerce. After we looked into that line we found there were a number of subordinate product lines within that broader line. Then we tried to determine whether there would be an impact in any of these more narrow lines where the impact might be more pronounced than in the woole line of commerce.

We considered magnet wire and we considered weatherproof and we considered several others and we decided not to take up the Court's time with all of these, but we decided

to limit our consideration in these narrow lines...

The Court: Why isn't service drop a part of insulated wire and cable?

[fol. 1166] Mr. Melchior: It is a part of it.

The Court: Then why shouldn't they sell it?

Mr. Melchior: Because we feel that the impact would be greater in service drop than in the broader line. But we do have the broader line too, as you know.

The Court: Yes, I know you do. I am talking about the entire line. Of course I don't think you can determine a line of commerce by looking back and finding out what its impact is and then go back and say therefore it becomes a line of commerce. That is the only way I can consider your statement.

Mr. Melchior: I said we selected that among several we considered to be lines of commerce. We considered there were several insulated lines, many broader lines of insulated wire and cable. We say there were a number of product lines which appeared to have peculiar uses and characteristics and we noted that Alcoa had ten percent of this line and Rome had five percent roughly, and the addition of the two would give them fifteen percent in [fol. 1167] the market. We felt therefore the probable impact would be greater and more direct and that is why we allege this.

The Court: That is not my question at all. How is it a separate line of commerce? What you are doing is telling me the result. What I have to start off with first is to find out what the probable line of commerce is and

then I go to the impact.

Mr. Melchior: Yes.

The Court: And I think you should do the same thing. Mr. Melchior: I think we did. I think we are right at that line and offered the General Motors-DuPont criteria, which was the peculiar use and characteristics. We found out that service drop cable had a peculiar use. It was used between the pole and the house. We also found out that it had peculiar physical characteristics. It had that winding effect which distinguished it from other wire and cable.

The Court: Every cable has a winding effect. Do you know any that hasn't?

Mr. Melchior: Not just the way this particular cable has. [fol. 1168]. The Court: That is my understanding of what cable means, generally speaking. It is winding. It is a combination of smaller elements into the whole. Because something is winding doesn't make it a line of commerce.

Mr. Melchior: We also found it was generally considered in the trade to be a line. Industry people speak of it as such. The Government collected statistics on it. And it was generally recognized in the catalogues of Alcoa and Rome that this was a particular product. Adding all these factors together, and we discussed them in our brief, all

these factors indicated to us that this was a separate line of commerce.

We urged that spikes in the Bethlehem Steel case was a line, a separate line of commerce, as well as hot rolled sheet or cold rolled sheet.

The Court: I don't agree with you, but go ahead.

Mr. Melchior: Ledon't know whether I want to take the Court's time unless the Court thinks I should and go through each of the lines of commerce as Mr. Bergson did. But I would like to discuss aluminum conduit and conduit generally.

[fol. 1169] Here we have a situation which I think I can

make as an example of all others.

Apparently the defendants and plaintiff agree that conduit included both steel and aluminum rigid and EMT are not an approapriate line of commerce against which this proceeding can be discussed. And L don't feel it is necessary to offer proof if we are pretty much agreed on that. We directed our proof to the question of aluminum conduit as a separate line.

The Court: Well that's just it.

Mr. Melchior: I beginardon?

The Court: As I understand the defendant, they probe ably go for the steel and aluminum.

Mr. Melchior: That's right.

The Court: But you have set that for aluminum alone.

Mr. Melchiof: We say both.

The Court: I understand that you set the first one but you do set up the aluminum alone.

Mr. Melchior: We feel that aluminum rigid conduit and aluminum EMT is separate because of its peculiar physical characteristics. We have plenty of testimony from witnesses and plenty of testimony, documentary evidence, that [fol. 1170] there are substantial differences between aluminum conduit and steel conduit. We admit that steel and aluminum compete with each other. We don't deny that. But this doesn't indicate a line of commerce, we feel. We feel that is the Cellophane test. Merely because two products compete doesn't mean under the Clayton Act that they are in the same line of commerce. I think the Sherman Act connotation may come up with this answer. They are

trying to prove it is substitutable but that is not the case.

The test is peculiar use and characteristics.

Aluminum conduit is a different product than steel and why we think it is a separate line is because there was testimony from some witnesses that in time aluminum will replace steel for most uses. There is testimony that in the Manhattan area alone the use of aluminum currently is approaching seventy or eighty percent. This to us indicates that these two lines may ultimately merge. There was testimony that the steel industry will fight back. I expect that they will. And that is why we are willing to admit that not only do you have an aluminum [fol. 1171] line of commerce but a line that includes both.

The Court: It is hard for me to understand how to set up in one line of commerce aluminum conduit and steel

conduit, as one line of commerce.

Mr. Melchior: We are in agreement on that\_

The Court: I don't care whether you are or not. I don't care whether you are. I don't care what you people agree on. I am trying to get information for myself.

Mr. Melchior: Yes sir.

The Court: Then to go on and say that aluminum alone is a separate line of commerce, that is the thing that is hard for me to follow. Where your first allegation is that the two of them constitute a line of commerce and then one of them alone constitutes a line. That is what is hard for me to get.

Mr. Melchior: I think there is much basis for this in the Bethlehem case. There the Court found that the steel industry as a whole was an appropriate line of commerce. The whole steel industry and it's multifarious [fol. 1172] products. That was one line of commerce. In addition to that it found that particular impact lines within the steel industry were also lines of commerce.

The Court: But you are taking two different industries bere. You are taking the aluminum industry and steel industry and putting two of their products together and saying that that constitutes a separate line of commerce.

Mr. Melehior: We are putting steel and aluminum conduit together.

The Court: Yes. But the thing that is hard for me to understand is that you split that in two and say that

a single product from a single manufacturer is also a

single line of commerce.

Mr. Melehior: We feel that the probable impact will be much greater in aluminum as aluminum grows in importance and may ultimately take over the whole metal conduit line field and the impact will then also be felt in the whole steel and aluminum line.

I think there is multiple judicial precedents for finding

a line of commerce within broader lines.

[fol. 1173] The Court: No question about that.

Mr. Mochior: You just can't appreciate the logic of it. The Court: I can't even appreciate the common sense of it either. You will have to admit to start with that you set up your aluminum and steel conduit as competitive in the same market, and the evidence has been here that they compete with one another. But then you simply take one out and say "We will treat that separately". Maybe you are right about it, but it is hard for me to understand that.

Mr. Melchior: We do that in the wire and cable field, as you well know. The government has urged from the inception of this case I believe that the relevant lines of commerce, where the probable impact will be most felt is in the field of aluminum conductor wire and cable. Not only of aluminum but the two lines within the broader line. The insulated and covered aluminum line and the bare and ACSR line.

Now we are willing to agree with defendants on their [fol. 1174] urging that the broader conductor line which includes both aluminum and copper, are also a line. Now it is our view in the wire and cable situation, much the same as it was in the conduit situation, that the immediate impact would be in aluminum. And ultimately it will be in all wire and cable because of the growing importance of aluminum.

Now there was ample testimony that aluminum has displaced copper in a number of areas. As a matter of fact for overhead transmission it has just about completely displaced it. And we think from the testimony of the witnesses that this displacement may continue because of the wide difference in cost and because of certain different physical characteristics.

And as the government sees it we can not only urge the aluminum line of commerce but the broader line of both. And of course the government can win on either one or both. And I think the Court would be entirely consistent in finding a probable impact in the aluminum line as well as in the line which includes both aluminum and copper.

Now unless Your Honor—I don't want to make this a complete discussion of all the issues. I couldn't do it—[fol. 1175] it wouldn't be fair for the government for me to try to do it now.. So if you have any questions, I shall

try to answer them.

The Court: Yes. What about your first couple of charts here? It seems to me to show, if I understand it right, that the share of the market for these two companies in conductor wire and cable and ASCR I guess, decreased rather than increased since the merger. That is shown by your charts,

Mr. Melchior: Which particular one are you looking at

Your Honor'so I will look at the same one?

The Court: The first one. That is the aluminum conductor wire and cable.

Mr. Melchior: Yes. That is aluminum conductor wire and cable.

The Court: Yes.

Mr. Melchior: This is all aluminum, both insulated and bare, and it shows that in the year 1959, which was the year of the therger, Alcoa had 26.9 percent of the total and

Rome had 1.6 percent.

Now if I may make a comment there, and I would like to particularly since defense counsel keeps talking about [fol. 1176] this diminution figure and expresses the view that 1.6 percent is nothing. Now I don't have before me the dollar value involved.

The Court: Let's get finished with what I started out with. Isn't it a fact that their share of the market has gone down rather than increased since the merger?

Mr. Melchior: This just shows the year, '59.

The Court: I know. But the evidence includes '60.

Mr. Melchior; Well we don't have that on here.

The Court: Then apparently you can't answer it. And the same thing on the second chart.

Mr. Melchior: Let's assume that this is the case and it

may be the case, but I don't think this would indicate anything because I don't believe the impact required has to be immediate. I can very well understand that Alcoa's percentage may continue to go down.

The Court: But isn't it a fact that anybody's prophecy [fol. 1177] —some philosopher said, the substance of it was that he can only predict the light that flows over his

shoulder from the past.

Mr. Melchior: Yes sir.

The Court: Isn't it a rather strong bit of evidence to show that in the practicalities of the market place since the merger that this danger which the government appre-

hends has not existed? Isn't that rather strong?

Mr. Melchior: I don't think it shows that at all. I don't believe there is enough information to show that. This merely shows the year of the merger. As a matter of fact, just to show it doesn't prove anything at all, if you look at Government's Exhibit 436, which deals with insulated and covered wire and cable we will find that their share has grown.

Now I am not going to stand and argue that because it went from 16.3 percent in '58 to 16.6 percent that it was due perhaps to this merger.

The Court: Well you shouldn't. It is 3/10ths of one percent.

Mr. Melchior: I don't believe the impact will be felt that [fol. 1178] quick in this merger.

The Court: We are still back to the simple question of —isn't it a fact, let's assume it is a fact, that if these first two charts which relate to——.

Mr. Melchior: Aluminum.

The Court: First to aluminum conductor wire and second ASCR and bare cable that the share of these companies has gone down—isn't that rather strong evidence which must guide my sense of prophecy?

Mr. Melchior: I don't believe they have gone down. If you look at the several years they have not necessarily gone down. I think in some cases they may have, but in others they have gone up.

The Court: My record indicates that in 1960 it is down. I don't care whether it goes up or down, that is not the

question I am asking. The question is very simple. Doesn't

Mr. Melchior; May I direct your attention to one which may give an indication of the-

The Court: I would like to finish this one and get your answer, if you can give it to me.

Mr. Melchior: All right.

[fol 1179] The Court: Let's assume it is a fact. Doesn't the fact that these two charts with the addition of 1960 show that Rome and Alcoa's share in the market has decreased since the merger? Let's assume that is true. Isn't that rather strong evidence which must guide my sense of prophecy!

Mr. Melchior: I think this is a factor you can consider.

I don't know that this should be controlling.

The Court: All right. Go ahead to something else. is obvious. Go ahead.

Mr. Melchior: I don't know what else I can say on that, Your Honor. Because some go down and some go up and I think this is a factor that you-

The Court: I am just taking them that they go down and you say they go up, and I said they have a perfect right to go down. You see, I got to pass on this separately. I don't see why we can't come to the end of it rather quickly. These first two lines of commerce show by your own chart that there is no gain by Alcoa from the merger, in these particular two types of commerce. If that is so, [fol. 1180] it seems to me that it must be a rather strong guide to my prophecy to the future. It must inevitably lead me to the conclusion that you have failed to show a reasonable probability of the lessening of competition.

Now you may take and argue just the opposite, and I am inclined to be with you on those lines of commerce that. show that they did increase. In other words, what good are these charts if you tell me "well you should not draw

any conclusion from it."

Mr. Melchior: I think the conclusion you can draw from these charts is what their position was in the years leading up to the merger and we bring them up to the merger year. Now there isThe Court: And they are brought up to the year after the merger, by the evidence.

Mr. Melchior: We didn't bring them up because we didn't

have the information.

The Court: The evidence is before me now. It is in your

case. Brought up to 1960.

Mr. Melchior: Well I think you should consider this fact in conjunction with all the other evidence we have received. [fol. 1181] The Court: Certainly. And I asked a very simple question that you could have answered in fifteen seconds.

Mr. Melchior: I don't want to say that that should be as strong as you would like me to say it, Your Honor.

The Court: All right. That is the answer. And it could have been done five minutes ago. Now if that is true then those charts that show that they gained in the share should also be of the same type of consequence?

Mr. Melchior: That's right.

The Court: In other words I should draw nothing significant from these charts?

Mr. Melchior: That's right. I don't think the one year period is long enough for you to place—

The Court: Then where is your case on the probability of the lessening of competition, if it isn't right in those charts? I don't recall any other evidence that amounts to much.

Mr. Melchior: We can only give statistics up until the time of the merger, but have a lot of industry testimony [fol. 1182] as to what industry conditions are.

May I direct your attention to another chart that may be relevent, which is the next three based on this. I think this may be of more significance. For example, 438. I

think this is much more significant than the first one.

Now it doesn't relate particularly to Alcoa and Rome but it does draw a distinction between the share of the market held by integrated companies, and if you will look and note the—

The Court: Counsel, what is your answer to the proposition that that seems to be that there is no competition between the integrated companies? As I understand it, they are just as highly competitive as anybody else.

Mr. Melchior: I think they are. The evidence indicates it.

The Court: Why are they grouped together any more

than for instance some of those that testified?

Mr. Melchior: To show the gradual diminishing share of the market held by the non-integrating companies. We tried to show that Rome is not.

[fol. 1183] The Court: It is a question of competition not of integration. And if the competition is between the integrated companies, as long as you have full competition you don't violate the law.

Mr. Melchior: As long as you have full competition.

The Court: Yes.

Mr. Melchior: I am not sure that you have full competition when you have three or four in an industry.

The Court: Neither am I. But certainly you can see that this, when you are saying that this is entitled to more weight—

Mr. Melchior: I think it is entitled to more weight, more weight, when there is a trend because you have from '55 to '59 but I don't think you can draw it from one year. And I am not sure, Your Honor, I am not sure that in these Section VII cases that you necessarily will need a trend or need what the impact is immediately after a merger. I think it may be sometime before actually the full effects of this is felt.

The Court: Oh so do I, Counseller. There is no dispute. [fol. 1184] The only thing that I would call your attention to I think, because I have not got your idea, I don't think your evidence of whether I can base a prophecy on a substantial lessening of competition in any of the lines of commerce is very strong. Certainly I don't seem to be able to get it from the sheets, from these graphs or charts.

Mr. Melchior: Well I think these are just the bases we have to take along with the other information we have. Both.

The Court: What other information have you got?

Mr. Melchior: We have almost five hundred documents in the record, and I want to point out some information in there.

The Court: True, I have not read the five hundred documents, but I will. Of course you can argue about the lines of commerce and the market and so on. But I actually see very little evidence here of anything that I could base a rational prophecy on of a substantial reduction in competition. I turn immediately to those three charts. I think they show just the opposite. Some of the others, [fol. 1185] some of these other charts do show some gain, but not very much.

Mr. Melchior: As a matter of fact I think some of these charts show up and down. But if you would take the long enough period of time I think you can see the trend.

The Court: I got to decide it from the evidence that is

before me.

Mr. Melchior: Can Your Honor visualize the elimination of Rome from the market as an independent entity, as being an important consideration? Can Your Honor visualize this? This is a simple thing to see. Rome Rome was here as a strong forty million dollar corporation, independent in 1959. Rome is not here any longer. Rome is now a part of Alcoa. It seems to me that is a very dramatic way of seeing what the probable lessening was to the wire and cable industry. Rome is no longer independent. And the Congress has said the elimination of a substantial factor is sufficient to show violation.

This I think is a very strong argument. These figures that we have merely help to support that.

[fol. 1186] The Court: You are back to the proposition that the merger alone constitutes a violation of Section VII.

Mr. Melchior: I think that is sufficient.

The Court: Well, of course, I don't. And I don't think that you have any case that goes near holding it, do you? Sure we can say dramatically Rome is not here.

Mr. Melchior: I might also point out that not only is Rome not here but there have been others who have been eliminated since 1957—who have been eliminated by merger.

The Court: The corner groceryman is not here. The independent storeman is not here. The little man everywhere has receded under our method of doing business, has somewhat I think been cut down in size.

Mr. Melchior: That is true.

The Court: Now maybe that is wrong. But I don't think any Court can ever pass upon the social aspect of business competition in this country. I think that the whole propo[fol. 1187] sition of the law is to get a healthy competition and it isn't healthy where Alcoa or any other company has to sit idly by and watch the men and their product go by. And it seems to me the government ought to be the last one—and I am not talking about the merger—to prevent their making their business a profitable one.

Mr. Melchior: I think I indicated we have no quarrel with Alcoa as to size.

The Court: I don't know whether you have or not. Many times during the course of this trial you have used the word "dominance" and "price squeezing" directing it back to primary producers.

Mr. Melchior: That's right.

The Court: So it must be in your mind.

Mr. Melchior: It was in my mind. These are dominant companies and the Congress has said a dominant company shall not enhance its dominence by merger.

The Court: But Congress never intended that a company whose output demand for its services has been going down, whose product has been going down should be prevented [fol. 1188] from taking any reasonable step as long as they don't particularly harm somebody else to increase or help their own position.

Mr. Melchior: But they are not permitted to do it by the merger route. That is what I think the Congress has stated.

The Court: I think the merger itself is not unlawful and the burden is still on you to show those three essentials before it can be declared unlawful. I think I am going to hold that you got to establish those three. You got to establish your lines of commerce; you got to establish your competition and the likelihood of reduction of competition. And you can't sit back and simply say because this didn't occur Congress wouldn't like that. I don't think I will hold with that at all.

All right, gentlemed, I thank you. I guess I got a little better definite idea of the issues and maybe you understand mine.

[fol. 1189] All right, now. This don't need to go on the record.

(Discussion was held off the record which the Reporter was asked not to take.)

The Court: I am reserving decision and taking the defendants; case.

Recess this case until Monday morning.

(Whereupon at 5.25 p.m. o'clock an adjournment was taken to Monday, February 19th, 1962, at ten o'clock a.m.)

## [fols. 1190-1191] [Title omitted]

# Transcript of hearing-February 19, 1962

[fol. 1192] The Court: All right, I guess the case is with the Defendant. All right, Mr. Bergson.

Mr. Bergson: Mr. Schatzel.

RUDOLDH A. SCHATZEL, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

#### By Mr. Bergson:

- Q. Mr. Schatzel, will you please state your name and address.
  - A. Rudolph A. Schatzel. Do you want the street address?
  - Q. Yes.
  - A. 1101 North George Street, Rome, New York.
  - Q. What is your place of employment?
  - A. Rome Cable Corporation at Rome, New York.
- Q. What position do you hold at the Rome Cable Corporation?
- A. At the present time I am a consultant to the Rome Cable Corporation.
- · Q. What was your immediate past position with Rome Cable Corporation?
- A. Until January 1st it was Vice-President, Director [fol. 1193] of Engineering and Research.

Mr. Bergson: Your Honor, I would like to use Mr. Schatzel both as a fact and expert witness, so I will qualify him as an expert witness.

The Court: All right.

# By Mr. Bergson:

Q. Will you please state the previous positions which you held in the wire and cable industry?

A. In the wire and cable industry as such, in 1924, I won't go through all the dates, I was assistant director or research for the Rome Wire Company at Rome, New York. And in 1927, when that became the Rome Wire Division of General Cable Corporation, I was the technical director of the Rome Wire Division of General Cable Corporation. And in 1935 I became the Director of Research for General Cable Corporation and held that position until about the middle or the spring of 1945, when I entered the government service as a technical consultant for the War Production Board and later overseas for the army, the headquarters in Europe—

Q. Was that Schaaf?

A. I tried to remember that name, Schaaf, and at that [fol. 1194] time as a member of the Technical Industrial Intelligence Committee, which was organized as a joint committee with the English.

On my return, on my discharge from that duty, and from the War Production Board, I entered the employ of Rome Cable as Vice-President and Director of Engineering Research.

Q. And when was that?

A. August, 1945.

Q. And you held that position until you became a consultant on January 1st?

A. Right.

Q. 1962. Now, what was your educational background,
Mr. Schatzel?

A. I. was graduated from Union College, Schenectady, with a degree of bachelor of science in chemistry. And took my masters degree while continuing there as a teacher and instructor in chemistry. Then I went to Massachusetts Institute of Technology as a teaching Fellow in Physical Chemistry and took further graduate work in physical chemistry and physics.

Q. Are you a member of any professional associations that have to do with the wire and cable industry?

A. Yes.

[fol. 1195] Q. Would you tell us what those are or were?

A. Well, at the present time I am a life member of the Insulated Power Cable Engineers Association, and represent the IPCEA, on certain committees of the American Standards Association. I am a life member of the American Society for Testing Materials and a member of many of its committees. For 18 years I was the Chairman of its Committee on Insulated Wire and Cable. I am a member of the American Standards Association, member of its Standards Counsel and until January was Chairman of this Committee on Insulated Wire and Cable. [fol. 1196] Q. When did you become chairman of that committee!

A, In 1945. Until recently—I think I still am—I'm not sure on that—a member of the Industry Advisory Committee for the Underwriters Laboratory, and I think that's about all that I can recall right now.

Q. Are you a fellow of the American Institute of Chemists?

A. Yes, American Institute of Chemists and the American Chemical Society, a member.

Q. Were you ever a member of the American Institute of Mining and Metallurgical Engineers?

A. Yes, until the end of the last year I was.

Q. Were you ever a member of the British Institute of Metals?

A. British Institute of Metals, yes, and British Institute of Rubber Industry, and I have been and still am—I forgot that—a member of the American Institute of Electrical Engineers.

Q. Mr. Schatzel, have you prepared for use in this case a chart entitled "A typical Electrical System"?

A. Yes.

[fol. 1197] Mr. Bergson: Your Honor, I would like to hand up to you defendant's Exhibits AR-12 through AR-20a for identification, and I will introduce these from the chart.

The Court: Mr. Bergson, can I retain this?

Mr. Bergson: Yes, sir, that is what we are going to put in the record.

Q. Mr. Schatzel, you have a copy of this "Typical electrical system"?

A. Yes. \*

Q. When was that chart made up?

A. Well, this was made up-I can't place the exact date,

but I'd say July, 1960.

Q. July, 1960. Now, would you describe for his Honor the typical electrical system, stating what types of wire and cable are used in each part of the system—and perhaps the best way to do that would be for you to take this pointer which I find here and just tell us what that system is.

A. Well, the chart represents a typical electrical system. It does not represent all of the possible types of electrical [fol. 1198] systems that there are, but in this range most of our transmission systems of the country could be described. From some source of energy we have the generation of power and its transmission generally overhead, which we haven't shown here, to a transformer. It may be underground, depending upon proximity of it. And that is generally in the voltage of from 2,000 to 15,000 volts, which is shown here. Then it is transformed up for more efficient transmission to distances as a bulk energy to some distant point, for distribution.

Q. May I interrupt you there. What type of wire and cable is used for the transmission from the transformer

station to the distribution substation?

A. From here? This?

Q. Yes.

A. Overhead wires, generally the steel reinforced aluminum cable, ACSR, or copper cable, which in new installations today I can testify to here, which is in operation throughout the country, there are still large amounts of copper cable transmitting at—well, the Boulder Dam line is 287,000 volts, which is all copper. At up to 400,000 volts, [fol. 1199] which is the typical of the Niagara Mohawk line running close to our airport.

Mr. Melchior: I wonder if counsel would stand to the side. Mr. Rergson: I beg your pardon.

A. (Continuing) The principal type of cable used in here is  $\Lambda(SR)$  of various kinds, of design—I think we may get into that later.

Q. Pardon the interruption. A thought it might be helpful.

A. From here, a step-down transformer is used to bring this into what we call sub-transmission. Now in the system

of Mr. Ware, of the Virginia Electric Power Co., he omits this and he calls his system everything below 66,000 is distribution. But the more usual system has a range which they call sub-transmission, and in this the same type of cable is used as is used in the regular transmission, except that in here frequently for all or a part of this, we may have an underground cable. We have underground cables that can operate up to a good part of this range, but many of them operate at 60,000 and over. So that in this it is common to have an underground system, as well as an [fol. 1200] overhead, and that we have shown by this dotted line.

Then we finally come to what is known as the distribution system, and we have shown this going through a step-down transformer and has a voltage of 2400 to 13,000. That again is variable. Many times it may be 15,000, it may be as high as 22,000, but this is typical of a large number of systems, and again in this system and even to a greater extent than here, we will have an underground system distribution as a unit to the overhead.

Then we finally come to what is known as the second-

Q. Before you get to that, would you tell us what type of wire or cable is generally used in the primary distribution system?

A. The primary distribution system, again, is largely ACSR overhead, although in some cases it is all aluminum, and I might say that in this system too there is some all aluminum, depending on the terrain of the country. Where the terrain permits poles where there is not much ice or snow loading or windage, then the weaker type of construction can be used, and in many cases the pole distance [fol. 1200-a] which has to be made closer won't offset the general cost of the line. The overall cost. But in general it is aluminum or ACSR.

[fol. 1201] Q. Is there some copper used?

A. Some copper is used. And here there are places where copper is preferred, particularly since we are getting into areas where there is industrial atmospheres and it might be along the sea coast. I think we had testimony about that.

Q. When you say "here," you are talking about primary distribution?

A. Primary distribution ..

Q: The "heres" don't show on the record as to what you are talking about.

A. All right, pardon me. Then this shows again an alternate underground and that doesn't have to stop at that pole. It can be a complete system. Next is secondary distribution and we come here (indicating) to a transformer, which is a further step down to use voltages, utilization voltages or customers voltages, which has a maximum of 600. That again has variations and we show a line here as an open wire line and in that there may be mostly bare aluminum or ASCR or some copper, or in many sections there be triplex used in here, in the place of the open wire. And the triplex that they—I don't think I need to describe it here.

Q. I think you might as well.

[fol. 1202] A. It is simply two or three, depending on the type of service, insulated aluminum or copper conductors twisted an around an aluminum ACSR or a steel reinforced copper or hard drawn copper. Those combinations are all possible depending on strength required. Then we show here the services—

Q. Before you get there, is that in the secondary distribution? Is any of that covered or insulated line wire?

A. Yes. This is covered line wire either fibrous or polyethylene or neoprene, if it is open line wire. That is practically all on that. And that can be true to a large part of this (indicating) too.

Q. And what is the conductor used in this line, in this covered line wire? Is that aluminum, copper, or either?

A: Both. But predominantly at the present time it would be aluminum. But I would say in this area (indicating) it is hard to tell which is predominant.

Then over here we have our services to the premises which we show here as three different types of services. Again, we may have an open wire line just the same as this. And in that case it would be the same type of cov[fol. 1203] ered conductor, smaller in size. Then we also have the alternate which in many sections is underground. And then we have what we call a cable which could be a

triplex or any of the other types of service entrance cable.

Q. Service entrance or service drop!

A. Service drop. Pardon me. The only qualification that we can make of what we call utilization of voltages is that this again is a matter for the customer to decide. We can have utilization on any one of these steps: A large steel company like the United States Steel or Bethlehem or Aluminum Company or Kaiser could put in their own transformer and take power direct from this. That will be utilization.

Q. Just as in this primary distribution you show industrial?

A. Yes, like over here (indicating). That is one taken directly from the primary distribution and used in a small industrial plant.

Q. And so far as the commercial is concerned it can come from primary or secondary distribution?

A. Correct.

#### OFFERS IN EVIDENCE

Mr. Bergson: Your Honor, I would like to offer the Chart 12, which is designated Defendants' Exhibit AR-12 [fol. 1204] for identification in evidence.

The Court: I will receive it.

(Defendants' Exhibit AR-12 for Identification received in evidence.)

Mr. Melchior: Judge Brennan, now should we interrogate the witness about each exhibit as it comes in or shall we wait?

The Court: I don't care, whatever you think will be more efficient,

Mr. Bergson: I think it would be more efficient if we let Mr. Schatzel finish his direct testimony and then you can interrogate him—

Mr. Melchior: On all the ones that go in?

Mr. Bergson: Yes. As I did on your charts.

Mr. Melchior: All right.

## By Mr. Bergson:

Q. Now, Mr. Schatzel, I show you two circular or cylindrical pieces of metal and I would ask you to tell his Honor what they are.

A. Well, this is (indicating) 3/8 inch aluminum redraw rod. Perhaps we should clarify that and say it is E.C. alufol. 1205] minum redraw rod. And this is (indicating) a 3/8 inch hot rolled electrolytic copper, also redraw rod.

Q. Now, are these the rods from which aluminum wire and cable are drawn on the one hand and copper wire and cable are drawn on the other hand?

A. Yes, with the one exception. Usually we use a smaller size.

Q. I am sorry. I show you-

A. (Indicating) This is the 5/16 copper and this is the more common size used.

Mr. Bergson: I am not going to offer these, your Honor. Would you like to see them?

The Court: Yes. Perhaps I can get enough of these to make a do-it-yourself kit.

Q. Now, Mr. Schatzel, I show you a product board, a copy of which, a colored copy of which has been marked Defendants' Exhibit AR-13, together with a legend describing the products thereon as Defendants' Exhibit AR-13A, and ask you whether that product board was prepared under your direction and supervision?

A. Yes, it was.

Q. Now, would you explain to his Honor what these various products are?

[fol. 1205a] A. Can I stand?

Q. Yes. Stand and point to them.

A. This upper one (indicating) is a high voltage transmission conductor which we call expanded ACSR type, has a steel core and it is then expanded by fillers of paper or jute with aluminum metal to hold this outer conducting core and to make it larger. And this other is a—

[fol. 1206] Q. Now, the other one is No. 2. The first one you were talking about is No. 1.

A.M will remember that. No. 2 is a standard ACSR which is 336,400 circular mils in size, and that is a relatively small transmission conductor.

Q. Would you explain to his Honor how you arrive at the circular mil size?

A. Well, in order to have some system of measuring

these wires, we have established wire gauges, but in the larger sizes we run out of numbers because the wire gauges run from 1 on down to 50 or 60. The smaller size. It is a retrogression. And the larger the size the smaller the wire. So above 1 they use a different system, and since they are all stranded the first ones go up to about 4/0, they call it. This is a little larger than that. And then, again, it is a question of how to tell what the size is, and so we designate them by circular mil area. And the circular mil is the square of the diameter in mils, a mil being 1/1000th of an inch, so one circular mil would be a wire that had 1 mil in diameter. 4 circular mils would be one [fol. 1207] that had 2 mils in diameter, and so forth. This one is 336,400 circular mils in diameter, and the one above it is 1,275,000 circular mils in diameter.

- Q. Now, prior to the acquisition of Rome Cable by Alcoa, did Rome Cable make either of those two products?

  A. No.
- Q. That is No. 1 or No. 2 on the product board entitled "Transmission overhead."
  - A. That's right.
- Q. All right, now. Would you explain the sub-transmission overhead.
- A. Well, this being both lower voltage, as we see here, and carrying small blocks of power, is generally again somewhat smaller. Can be smaller in size and somewhat more simple in construction. And No. 3 is a 4/0 ACSR bar transmission conductor, and that is just one size, and there may be some sizes where smaller, and where larger sizes would be used. It is representative of the type. Not the only type. And below that is the equivalent of No. 2/0, AWG, of copper for doing exactly the same thing. This is 4/0 AWG aluminum, this is 2/0 AWG copper. No. 3 is [fol. 1208] 4/0 aluminum and No. 4 is 2/0 copper. Hard drawn copper.
- Q. Prior to the acquisition did Rome and Alcoa both make the 4/0 ACSR?
  - A. Yes.

Q. That is No. 3 on the product board. And prior to the acquisition did Alcoa make the copper product that is No. 4 on the product board?

A. No.

Q. Rome made that, but Alcoa did not?

A. Rome made that, but Alcoa did not. Right.

Q. Now, you said that ACSR, as typified by this cable under No. 3, came in various sizes?

A. That's right.

Q. What was the maximum size that Rome made prior to the acquisition?

A, 4/0 as represented here.

Q. It made small sizes but not the larger sizes?

A. Yes. It made the smaller but not the larger.

Mr. Bergson: I offer Defendant's Exhibits AR-13 and 13-A.

Mr. Melchior: No objection.

The Court: Received.

[fol. 1209] Q. Now, Mr. Schatzel, I show you a product board entitled "Primary Distribution Overhead," a color photograph of which is marked for identification as Defendant's Exhibit AR-14 and a legend describing such products as AR-14-A, and ask you whether this product board was prepared under your direction or supervision?

A. It was.

Q. Would you please explain to his Honor what these products are.

A. No. 1 is 4/0 AWG ACSR bare conductor, same as we see on the previous board, and that we have already described.

Q. That is used for what?

A. Well, that is used in this chart here for overhead distribution; primary distribution. In this general range of voltages which I qualified and said could be higher than that. The next is another type of aluminum conductor which is used for the same purpose, and that is 4/0 also, but it is all aluminum. It is not steel reinforced. And it serves the same purpose. And No. 3—that was No. 2 I just mentioned—No. 3 is all copper. 2/0, hard drawn cop-[fol. 1210] per, again used for the same purpose, and is of equivalent conductance to these other two. No. 4 is a 2/0 AWG ACSR polyethelene or neoprene—can be either—covered, weatherproof, or the word here has been used, "line wire." That is used also for the same purpose, particularly in urban areas near cities and within cities.

No. 5 is a smaller size copper. It is the same conductance and it is a hard drawn copper polyethelene covered weatherproof or line wire. That too could be neoprene.

The Court: No. 4 is aluminum?

The Witness: No. 4 is aluminum. 2/0.

No. 5 is copper. No. 2.

Q. Are they both used for the same purpose?

A. They are both used for the same purposes. No. 6 is a 2/0 polyethelene insulated tree wire. This you will see has the same conductor size as this, but it has heaver insulation and a different type of insulation, and that is used in cities or in the country where it has to go through heavy foliage, and the abrasion of the tree would work through ordinary insulation. In some cases this is used for that purpose, but with tree guards—that is plastic or [fol. 1211] wood guards that clamp to the wire. But where the foliage is thick, and there isn't just one or two limbs, or where it is brush, this would have to be used.

Q. This is No. 6?

A. That is No. 6.

Q. What is the conductor metal in that?

A. Aluminum. It could be copper. Either one can be used. And the No. 7 is the equivalent of it. It is No. 1 polyethelene insulated copper tree wire.

Q. No. 6 and No. 7 are comparable products. One with aluminum as the conductor, and the other with copper as the conductor?

A. That's correct. Now, as No. 8 is a self-supporting aerial cable. You will see it differs from the triplex in that the three insulated conductors are twisted together and strapped to a neutral which is the supporting member. This neutral is a strength member as well as a neutral conductor, and that usually is used at fully insulated—at any voltage up to say 15,000. This happens to be 5,000 volts. Below is the same thing exactly, but with aluminum and a heavier rubber type of insulation instead of polyethelene, and this is an ACSR messenger. This is No. 9. [fol. 1212] Q. That is No. 9. And are 8 and 9 used for the same purpose?

A. 8 and 9 are used for the same purpose, yes.

Q. Now, of these products that you have described on

the primary distribution overhead board which products did both Alcoa and Rome make before the merger?

A. No. 1, 2 and 4.

Q. Now, No. 1, you said was 4/0 ACSR?

A. 4/0 ACSR.

Q. Which is the same as that product on the transmission overhead board?

A. That's right.

Q. And the other is 4/0 of aluminum cable?

A. Of aluminum, that's right.

Q. And the third one is No. 4?

A. That is 2/0 ACSR polyethylene or neoprene covered

weatherproof or line wire.

Q. Can you tell me whether any products on that board that were made prior to the merger by Alcoa which were not made by Rome?

A. Made by Alcoa-

Q. But not made by Rome?

A. No.

[fol. 1213] Mr. Bergson: I offer Defendants' Exhibit AR-14 and 14A for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendants' Exhibits 14 and 14A for Identification received in evidence.)

#### By Mr. Bergson:

Q. Now, Mr. Schatzel, I show you a product board and entitled "Secondary Distribution Overhead," a color photograph which has been marked for Identification as Defendants' Exhibit 15, and a legend describing the products on that board, which has been marked for identification as Defendants' Exhibit 15A, and ask you whether or not that product board was prepared by you or under your direction or supervision!

A. It was.

Q. Now, would you please describe what each of the products on that product board is!

A. No. 1 is a 1/0 ACSR bare conductor. That is relating this to the chart (indicating). We have shown a small-

er size as is used for smaller blocks of power and this is used as overhead distribution, secondary distribution. No. [fol. 1214] 2 is a 1/0 aluminum exactly the same thing, but of course without the steel reinforcement and is equivalent in conductance to the ACSR.

Q. It is used for the same purpose?

A. It is used for the same purpose. And No. 3 is a 2 AWG hard-drawn copper conductor also of equivalent conductance of numbers one and two, and used also for the same purpose. Then No. 4 is a 1/0 aluminum with polyethylene or neoprene covered weatherproof or line wire. You see it is equivalent in conductance to the others but has a covering or partial insulation on it. . And No. 5 is a No. 2 copper polyethylene covered line wire equivalent to No. 4 in aluminum and used for the same " purpose. It could also be neoprene but here is just the polyethylene. No. 6 is a 2 AWG copper neoprene triplex, and it is used as we explained here, again can either be as part of the distribution system between poles or from pole to house as a service drop. So, again, I would call attention to the fact that while we are mentioning here specific sizes, these are representative and sizes smaller and sometimes larger are used for the same purpose, depending upon need.

[fol. 1215]. No. 7 is a three-conductor, No. 6, which is a service drop cable. This here (indicating) consists of two insulated copper conductors with a concentric copper conductor surrounding and a braid overall. This could also be used and has been and is used with aluminum. But

here (indicating) only copper is shown.

And No. 8 is a 2 polyethylene or neoprene aluminum triplex for service drop cable. And again that can be used either as service drop or for distribution in place of open wire.

- Q. And these conductors which you have just described, which were made by both Alcoa and Rome prior to the merger?
- A. No. 1 and 2 were both made by Rome and Alcoa. No. 4 was made by both. And No. 8. No. 8 with polyethylene only was made by Alcoa.
  - Q. No. 8 with neoprene was sold by Alcoa?

A. Yes, was sold. Sold both. I guess 1, 2, 4 and 8.

Q. Maybe it would be a good idea to clear up for the record what these letters mean on these charts. What does the "A" stand for?

A. The "A" is Alcoa and the "R" is Rome.

Q. And where they both appear together?

[fol. 1216] A That means they both make them.

Q. And where they appear separately it means only one did?

A. Either one, yes, &r.

Mr. Bergson: I offer Defendants' Exhibit 15 and 15A for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendants' Exhibits 15 and 15A for identification received in evidence.)

### By Mr. Bergson:

- Q. I show you. Mr. Schatzel, a product board entitled "Primary distribution underground and secondary distribution underground," a colored photo of which has been marked for identification as Defendants' Exhibit 16 and a legend describing the products which has been marked as Defendants' Exhibit 16A for Identification, and I ask you whether this product board was prepared by you or under your direction or supervision?
  - A. It was.

Q. Now, would you explain briefly for his Honor what those products are?

A. No. 1 is a 2 AWG copper conductor insulated with [fol. 1217] polyethylene and a lead sheath. It is rated at 15,000 volts.

No. 2 is a 500,000 circular mil copper with polyethylene insulation, a shield, which is this copper tape wound around, a polyvinyl chloride jacket and also rated at 15 KV, 15,000 volts. Now, the reason for the shield on this and not on this (indicating) is that the lead sheath itself acts as a shield.

And No. 3 is a 400,000 circular mil copper conductor insulated a butyl rubber compound shielded and a neo-

prene sheath, also rated at 15 KV. These are used as shown in this, as an alternate to the overhead for the underground distribution. And in many places and congested areas this is desirable and sometimes necessary.

No. 4 (indicating) is a No. 2 copper conductor with butyl insulation and a semi-conductor shielding tape in front with a concentric surface of tin, copper conductors. This for direct burial in the ground and is a common type

as an alternate to this (indicating).

No. 5 is a half million circular mil copper with a special [fol. 1218] insulation which we call rozone, which is ozone resistant for high voltage and again with a neoprene sheath, which is rated at 5,000 volts and at those voltages

a shield is not ordinarily required.

And the No. 6 is to simply show the same type of thing excepting in this case, a three-conductor cable. And I might say that in all of this excepting these (indicating) we could have one, two or three conductors made into the cable rather than laying three separate cables in the ground. But this is to show the variety of types that may be used. And, again, these are typical and the range in sizes can be anything from this (indicating) or smaller, to this (indicating). Depending on the blocks of power to be transmitted.

[fol. 1219] 'Q. The first "this" being 1, and the second "this" being 3?

A. Yes. Thank you very much.

Q. Did Alcoa make any of these primary distribution underground products prior to the merger?

A. No, Alcoa made no rubber insulated cable of any

type, or any of these types of cable.

Q. Mr. Schatzel, you have shown only copper here. Did Rome make any of these cables in aluminum?

A. For primary distribution, it was experimental.

Q. Now, on secondary distribution, would you please explain that.

A. Well, on the secondary distribution cable, again, these are all rated at 600 volts. While we show here 110 to 600, it is common practice in the industry to insulate and rate all for 600, so they can be used for any of the intermediate voltages. So I won't describe the voltage. They are all 600-volt cables.

No. 1 is 2/0 AWG copper with rubber insulation, and this is specially compounded rubber for moisture resist-[fol. 1220] ance. Not for high voltage, but moisture resistance, and with a neoprene sheath. And No. 2 is the same thing with a 4/0 aluminum. This was 2/0 copper. This is the equivalent conductor of aluminum.

Q. Is it used for the same purpose?

A. It is used in limited extent for the same purpose. No. 3 is a 4/0 copper, and that is a type that is made with a somewhat thinner neoprene sheath for duct use. The first one, No. 1, was intended for direct earth burial, or could be used for that. No. 3 where we would have some protection against mechanical damage by a duct, can be of a thinner sheath. And the No. 4 is equivalent aluminum. That is a 350,000 circular mil aluminum which is equivalent in conductance to the 4/0 copper, which is shown in No. 3. This in all other respects is the same. No. 5 is a No. 2 copper, three-conductor type RR for direct earth burial, or for duct use, with a neoprene sheath. Three individual conductors, insulated, cabled, and a neoprene sheath over all.

Q. Now, of these conductors that you described for secondary distribution underground, were any made by Alcoa prior to the acquisition?

A. No.

[fol. 1221] Q. All made by Rome prior to the acquisition?

A. Yes.

Mr. Bergson: I offer Defendant's Exhibits 16 and 16-A for identification.

Mr. Melchior: No objection.

The Court: Received.

Q. Mr. Schatzel, I show you a product board entitled "Utilization," a color photograph of which has been marked for identification as Defendant's Exhibit AR-17, and a verbal description of which has been marked AR-17A for identification, and ask you whether you prepared this product board or whether it was prepared under your direction and supervision.

A. Yes, it was.

Q. Now, relating this product board to the typical electrical system, where does it fit in the typical electrical

system?

A. Well, in our typical electrical system we have, with the other samples, now brought the power to the premise, whatever that premise is—small factory—store—whatever it is. And beyond that it is the use, or utilization within the premise or on the premise that this cable is supposed [fol. 1222] to function.

Q. What are these cables? Without going into each one individually, what is the purpose of these cables? What

are the purposes of the cables?

A. The purpose is to furnish power for whatever equipment, apparatus or function is desired in the home or in the factory.

Q. Is this what is generally known as the building wire

type of product?

A. Well, this is a little broader than the building wire type of product. It includes, as it does, No. 13 here an interlocked armor power cable which would be used for distribution of power to a factory, and so we call that a power cable. And in general parlance we distinguish between power cables and building wire, although they are power cables.

Q. Are these products made with both aluminum and

copper as the conductor?

A. Yes. As a matter of fact, the board shows 1, 3 and 5 with copper conductors, and 2, 4 and 6 are their equivalents with aluminum conductors.

Q. Are there any aluminum equivalents for 9, 10, 11,

12 and 13?

A. No.

[fol. 1223] Q. Prior to the acquisition, did Alcoa make any of these products?

A. No.

Q. Did Rome make all of these products?

A. Rome made all of these products.

Q. And Rome continues to make all of these products?

A. Correct.

Mr. Bergson: I offer Defendant's Exhibits 17 and 17-A for identification.

Mr. Melchior: No objection. The Court: Received.

Q. Now, I show you a product board entitled "Other Representative Rome Products," a color photograph of which has been marked for identification as Defendant's Exhibit AR-18, and a description thereof marked as Defendant's Exhibit 18-A, and ask you whether this product board was prepared by you or under your direction and supervision.

#### A. It was.

Q. Now, again without going into detail, will you describe generally for the Court what wese products are. A. Well, in general these products cover a very board range of where wire and cable is used in industry or government for specific applications. For instance, the first four of those show a copper and aluminum magnet wire which might be used in transformers or relatively. good sized motors. The next ones show rubber, insulated plastic insulated polyethelene or polyvinyl chloride in special compounds of these types used for control of apparatus in central stations, or for control of missile launchings or for control of shipboard apparatus and equipment aboard Navy vessels. Commercial ships. And on the right, No. 15 is a cable of a type that would be used both for missile control of equipment, or it could be used and is used for control of computers, like in the SAGE or warning systems, or in control of pressures and so forth on pipelines. The uses are many, and the types of cable are rather complex.

Another group here are for railroad signal systems. For instance, No. 21 looks like a very large cable. Well, it is. But it is used for power and used in railroad signal systems and operation of automatic equipment on those systems. Then we have some small wires and they [fol. 1225] can be very small, which is shown in 22 and 23. Those can be used for wiring up such things as radios, television, electric typewriters, smaller computers, or any type of apparatus that might be used—well, in either offices or in the home.

Q. Now, were any of these products made by Alcoa prior to the acquisition?

A. No.

Q. Were they all made by Rome?

A. Yes.

Q. Are they still being made by Rome?

A. Yes.

Q. Now, I notice the product board says "Other representative Rome products." Are there other products made by Rome which have not been portrayed, here?

A. Oh, yes, many. And these that are portrayed here are typical only. They exist in a wide variety of sizes and colors and numbers and configurations, and we show in here, for instance, No. 19 is a particular type of mining cable. We supply tremendous numbers of types of cables for operation of mines. These were selected as being typi-[1226] cal of probably two thousand, in that neighborhood.

Q. And of the two thousand, were any made by Alcoa

prior to the acquisition?

A. Of this type, no.

Q. What is the conductor metal used in those products?

A. All of these are copper.

Q. Are there any in which aluminum can be used, or is used?

A. Well, there is none in which aluminum—I did say—pardon me—in the beginning that we had shown here some aluminum square magnet. That is experimental. It is not a wide usage, but I would say that in general there is none of these in which aluminum at present is being used in volume, or liable to be used with our present knowledge, except in an emergency.

Q. Of all of the products that we have discussed on all of these product boards, is there any in which copper

cannot be used?

A. No. None.

[fol. 1227] Q. Copper can be used in every product?
A. Right.

Mr. Bergson: I offer Defendant's Exhibit 18 and 18-A for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibits 18 and 18-A for identification received in evidence.)

#### By Mr. Bergson:

Q. Mr. Schatzel, I show you a product board entitled "Service Drop Cable," a colored photograph, copies of which have been marked as Defendant's Exhibit AR-19 and the corresponding legend as AR-19-A for identification, and ask you whether that product board was prepared under your direction and supervision.

A. At was,

Q. Now, Mr. Schatzel, when was that product board prepared?

. A. That product board was prepared about two months

ago.

Q. The others were all prepared when?

A. Well, two were prepared I would say sometime in [fel. 1228] 1960, just prior to 1961. I think it was to be ready at one time where we thought this might happen in the fall of 1960 and it was to be ready at that time.

Q. Did I ask you to prepare that product board?

A. In a way, yes. Yes.

Q. You'say "in a way"—it was through my associates?

A. No. I think that you asked for it. I suggested that we would have some boards and you asked that it be prepared.

The Court: He got it anyway.

The Witness: He got it.

Q. Will you describe for the Court the products on that

product board.

A. I think I owe the Court and all here an apology. In making this up I didn't notice that the legend here is such that you cannot read it.

So under the first group here that legend is insulation, plastic and neoprene. And the second one applying to here (indicating), this is here, the insulation is plastic or neoprene, and this, the conductor is aluminum or copper. [fol. 1229] The first group, 1, 2, 3, 4 and 5 are all triplex type. We would say that they were multiplex, as in this service here it could be two, it could be three, it could be four. But this is typical triplex. And the first one is, and all of these I might say are all the same size, and all with insulated aluminum conductors number 4 AWG.

The first one then is No. 4 stranded aluminum conductor insulated with plastic or neoprene and with a No. 6 ACSR

messenger or neutral.

No. 2 has the same insulated conductors which were generally described, and with a No. 4 solid alumoweld neutral. Alumoweld I might explain is a steel core with an aluminum sheath.

No. 3 the insulated conductors, two with a No. 4 all aluminum neutral. So far we have ACSR neutral, alumo-

weld neutral and an all aluminum neutral.

No. 4 are the same aluminum conductors insulated with plastic or neoprene and a No. 6 copperweld neutral. This copperweld is stranded. It could be solid but it is more difficult to handle and it compares with this alumiweld. It is a steel core with a copper sheath surrounding it.

And No. 5, the same insulated conductors with [fol. 1230] a hard drawn copper neutral. These are all types of service crop cable that are used under varying

conditions or circumstances.

Q. Now 6 and 7.

A. Now 6 and 7 are the—No. 6 which is equivalent in conductance, No. 6 is copper, stranded copper, with a copperweld neutral and with a hard drawn solid core copper neutral.

Q. That is No. 7?

A. No. 7, pardon. These are all equivalent.

Q. They are equivalent with Nos. 1, 2, 3, 4 and 5?

A. Correct.

Q. The only difference between the two being that one is with copper conductors in 6 and 7 and aluminum conductors in 1, 2, 3, 4 and 5?

A. Right.

Q. And are these used for the same purpose?

A. Yes.

Q. Now, what are the remaining items on the board?

A. Well, this group (indicating), No. 8, 9, 10 and 11, No. 8 is a, we call aluminum style "K". And sometimes [fol. 1231] called a ribbon type. This is two insulated conductors with an asphaltic compound over it and into that is stranded an aluminum sheath. So it is insulated aluminum conductors with a neutral which is wound around it as a ribbon and used as a third conductor. It is a three-

conductor cable, which is the same as these are (indicating). The other is called a DD, it just happens that it is made a little differently. It is made with the two conductors here in a Figure 8 together. And this is alu-

minum strap wrapped around it.

Now, this "K" may have some, there may be some question of what it stands for. It simply stands for the fact that it was developed by Kansas City and it became popular out there and others have started using it and so we have called it "Style K" because that is where it originated. The red here, I might say, is not a necessary color. As a matter of fact, the usual color is grey. But some utilities have standardized on red for some reason. And that is what we call Type "SD."

Q. What does "SD" mean?

A. Service drop. That happens to be the Underwriters designation. And these are, the first number, No. 10 is an [fol. 1232] aluminum conductor with a concentric sheath of wires around it, there are two aluminum conductors with concentric survey aluminum wires, a paper type and a fibrous with weather resistant type. And this is what we refer to among the cables in this service.

Q. "This" being No. 10!

A. No. 10. No. 11 is copper type SD equivalent to No. 10 in all respects in construction, excepting it is a smaller size because of the difference between—in conductivity between copper and aluminum.

No. 12 is a No. 4 solid copper polyethelene covered line

wire, or weatherproof.

And No. 13 is a four solid aluminum neoprene covered weatherproof, And No. 14 is a No. 4 solid copper with a fibrous, that is a braid or knit covering saturated with an asphaltic compound.

Q. Are these used for service crops?

A. Yes.

Q. And are they shown in the electrical system?

A. They are shown here as open wire.

[fol. 1233] Q. And how are they used to perform the function of service drop?

A. Well, all of them bring power from the last pole to the premise. And all of these I mean are overhead or service drop, and the only other way to bring it into the premise is underground, and that is shown by some of the other boards.

Q. And is that construction in use today?

A. Oh, yes.

Mr. Bergson: I offer Defendant's Exhibits AR-19 and 19-A for identification.

Mr. Melchior: I object to this exhibit, your Honor. Shall

I examine the witness or state my reasons?

The Court: State your reasons.

Mr. Melchior: I beg your pardon?

The Court: Well, you better give your reason.

Mr. Melchior: The witness has described the first three groups as various types of cable. The exhibit is entitled "Service Drop Cable" but the witness has described the last three conductors represented as wires. Therefore, we [fol. 1234] urge that this exhibit is a misnomer and misleading because the last three are wires and the others are cable.

Mr. Bergson: I submit the line of commerce indicated by the government is service drop.

Mr. Melchior: And cable.

Mr. Bergson: And cable, and I think if anything, if there is such a line of commerce, anything that performs a service drop should be within the line of commerce.

The Court: I think we won't be confused about it. All you have to do is look at it and see that the latter three are wires. I will receive it.

(Defendant's Exhibits 19 and 19-A for identification received in evidence.)

The Court: I think you only have one more. I think I better take a short recess.

The Clerk: The Court is in recess.

(At this point a short recess was taken after which the trial was resumed.)

[fol. 1235] Q. Mr. Schatzel, I show you a product board entitled "Alcoa-Rome Overlap Products," color photograph of which has been marked as Defendants' Exhibit AR-20 for identification and accompany legend which has been marked as Defendants' AR-20A for identification,

and ask you whether this product board was prepared by you or under your direction and supervision?

A. It was.

Q. Will you please explain to the Court what this prod-

uet board represents?

A. We have previously shown ACSR, and this shows an ACSR product in the range of size from 6 to 4/0, which was the range which Rome Cable made, and which is part of the range which Alcoa also made. It shows all aluminum shown here as AAC, and it shows from No. 8 to a million circular mil size.

The Court: Thousand.

A. (Continuing) Well, this is a thousand but it is MCM. A thousand thousand. This is a thousand thousand or a million circular mils. And this is a range that was common to both companies. Next is aluminum line [fol. 1236] wire. There is no distinction here as to the covering, and the range again that was common to both companies was No. 6 to one million circular mils. And also in the multiplex, No. 6 to 4/0 multiplex. And these were the types of wire which both companies made.

Q. Now, on aluminum multiplex, which is the fourth product on that board, for what purpose was that used

or can that be used?

A. Well, that can be used either as a distribution cable, particularly for secondary distribution, or for service drop. It has also been used for multiple street lighting, and that is not an uncommon use for it.

Q. Now, Mr. Schatzel, am I correct in understanding that all of these products for trade here in these product boards, these four are the products which both companies

made?

A. In that range of sizes. Yes.

Mr. Bergson: I offer Defendants' Exhibit 20 and 20A for identification.

The Court: Received.

(Defendants' Exhibits 20 and 20A for Identification received in evidence.)

[fol. 1237] Q. Now, Mr. Schatzel, I show you a group of exhibits marked Defendants' AR-21, 22, 23 and 24 for identification.

A. Yes.

Q. And ask if these exhibits were prepared by you or under your direction and supervision?

A. They were.

Mr. Bergson: Here is a set for your Honor (hands documents to the Court).

Q. Now, would you describe briefly what Defendants' AR-21 for identification is?

A. Well, this exhibit consisting of these four pages describe what is involved in the making of insulated cables beyond the conductor. We accept the fact that we have a conductor of aluminum or copper. The rest of the cable, then, consists of the insulation itself, protective coverings which are required to various environments that the cable operate in. And this exhibit lists the types of insulating materials commonly used consisting of fiber yarns, varnish materials and plastics and then details under rubber as thermo setting materials the types of rubber that are used, and some of the materials commonly used in the [fol. 1238] compound of rubber for various purposes and applications and requirements.

And then the same thing for the thermoplastic materials, the types of thermoplastics and the compounding materials used in the making of useful insulating com-

pounds from them.

And the last sheet, or "protective coverings" are the outer protective sheathing, or it may not be sheathing, it is armor or ropes or braids or plastic coverings which are used primarily for protecting the insulation against the environments and the sheat-s.

Mr. Bergson: I offer Defendants' Exhibit 21 to 24 for identification.

Mr. Melchior: No objection, Your Honor.

The Court: I will receive them.

(Defendants' Exhibit 21 through 24 for Identification received in evidence.)

By Mr. Bergson:

Q. Now, Mr. Schatzel, referring to Defendants' Exhibit 22, which is entitled "Insulating Materials Thermoplastic,"

I ask you if you know which type or types of insulating material were used by Alcoa prior to its acquisition, prior to the acquisition of Rome, in its aluminum insulated [fol. 1239] wire products?

A. Well, in the manufacture of line wire and triplex—

now, is this prior to the----?

Q. Prior to the acquisition.

A. Prior to the acquisition, the only type that would be used on there would be polyethylene and the highmolecular weight and type.

Q. That was the only one that was used by Alcoa?

A. That is the only one.

Q. Now, of the same materials how many were used by Rome?

A. All of these with the exception of irradiated poly-

ethylene.

Q. Now, turning to Defendants' Exhibit 23 called 'Insulating Materials Thermo Setting,' which, if any, of these was used by Alcoa in the manufacture of insulated wire and cable prior to the acquisition?

A. Would this be in their manufacture?

Q. In the manufacture, I asked.

A. None, in their manufacture.

Q. Now, in their sale, which product was used?

A. The one product neoprene type GN.

Q: That is the third one?

A. That is the neoprene, you see, there are several [fol. 1240] types there. Four types of neoprene. GN is the type that was commonly used and is commonly used for this type of insulation, that is, the line wire.

Q. Line wire and triplex?

A. Yes.

Q. You made a distinction between manufacture and sale by Alcoa. Do you know where Alcoa obtained the neoprene GN line wire and triplex which it sold, prior to the acquisition!

A. Yes. Rome Cable manufactured that for them.

- Q. Now, of these materials on Defendants' Exhibit AR-23, which did Rome use in its manufacture of insulated wire and cable!
  - A. That is prior to the acquisition?
  - Q. Prior to the acquisition.

A. Well, I will give you what they did not use.

Q. All right.

A. Polysulphide rubber was not used. WRT neoprene was not developed yet. Just developed in the last couple years. Ethyl-propylene copolymers, and ethyle-propylene diene terpolymers. Those are still somewhat experimental—with the exceptions—no—and cross linked polyethylene. This was experimental, but not being used—with those [fol. 1241] exceptions, Rome used all of these.

Q. Now, has Rome, since the acquisition, stopped making any of the types it made prior to the acquisition?

A. No.

Q. Has it added any new types?

A. Yes, it has added the cross linked polyethylene which is a standard material. And to an experimental extent, the ethyl-propylene copolymers. How about the neoprene rubber WRT?

A. That is regularly used.

Q. Does Rome use it?

A. Yes, that is the standard product today.

Q. Now, I call your attention to Defendants' Exhibit AR-24 which is a table entitled "Protective coverings." And I ask you if Alcoa, prior to the acquisition, made any of these products?

A, No, not used them as protective coverings, no.

Q. And how about Rome?

A. Rome used—I think Rome used all of these.

Q. Now, Mr. Schatzel, would a company in your opinion with the ability to make more complicated wire and cable that you described to us this morning, be in a position, if it so desired, to manufacture weatherproof or line wire! [fol. 1242] A. Would a company that manufactured these

Q. A company that had the competence to manufacture—

A. Yes.

Q. If it had such competence, would it be able to manufacture triplex?

A. Yes.

Q. Mr. Schatzel, I show you a document, entitled "American Standards Specifications for Weather Resistant Wire and Cable Neoprene Type," which has been marked as

Defendants' Exhibit AR-25 for identification. I ask you if you are familiar with that publication?

A. Yes, very familiar.

Q. Now, would you tell us what the American Standards Association is?

A. The American Standards Association is the official standardizing body representing the United States at all international standardization work. It is the representative or it is the child, I would say, of all of the standardizing organizations in the United States, and recognized by the Federal Government as an official standardizing group in the United States for specifications of all kinds. It includes practically everything that we use. Cement, steel, copper, aluminum, plastic, rubber, and all other types.

[fol. 1243] Q. I notice that this document has on it "Approved January 15, 1954." Are these specifications in

effect today, so far as you know now?

A. Yes, they are.

Q. Now I invite your attention to page 1, paragraph 11.

A. You say page 1?

Q. Page 5, I am sorry. I beg your pardon. Page 5, paragraph 11, and ask you whether that paragraph, which is entitled "Scope" makes any distinction between copper and aluminum conductor?

A. It does not.

Mr. Bergson: I offer Defendant's Exhibit AR-25 for identification.

Mr. Melchior: No objection.

The Court Received.

(Defendant's Exhibit 25 for identification received in evidence.)

#### By Mr. Bergson:

Q. Mr. Schatzel, I show you a document marked Defendant's Exhibit AR-26 for identification which is entitled "American standard specification for weather resistant wire and cable, polyethelene type, American Standards [fol. 1244] Association", and ask you whether you are familiar with that document?

A. Yes, I am.

Q. I notice that that was approved August 13, 1957. Are the specifications contained therein still in existence?

A. They are in use today, yes.

Q. And I invite your attention to page 6, paragraph 11.

A. Yes.

Q. Entitled "Scope," and ask you whether in that paragraph any distinction is made between copper and aluminum conductor?

A. No distinction is made.

Mr. Bergson: I offer Defendant's Exhibit 26 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendants' Exhibit 26 for identification received in evidence.)

# By Mr. Bergson:

Q. Mr. Schatzel, I show you a specification marked Defendant's Exhibit, AR27 for identification which is entitled "IPCEA—NEMA Standards Publication, thermo-[fol. 1245] plastic insulated wire and cable for the transmission and distribution of electrical energy," and ask you whether you are familiar with that document?

A. Yes, I am.

Q. Now, would you tell us what the Insulated Power

Cable Engineer's Association is?

A. The Insulated Power Cable Engineers Association is an association of individual engineers of the power cable manufacturers in the United States, for the purpose of drawing up standards of construction and performance of cable.

Q. It is well recognized in the industry?

A. Yes, it is very well recognized.

Q. Are these specifications followed by the industry?

A. They are followed by the electrical industry and by the cable manufacturers industry.

Q. What is the National Electrical Manufacturers Association?

A. The National Electrical Manufacturers Association is a trade association of electrical manufacturers on the

United States. The number in it is voluntary provided that it meets requirements of the association. Or repre-[fol. 1246] sents the electrical manufacturers in the association. And it represents companies, I might say, and not individuals.

- Q. Now, would you turn to part 3, page 1 of this document which is dated July, 1961, and I ask you whether part three is still in effect?
  - A. Yes, it is.
- Q. Now, looking at paragraph 3.1 which describes—why don't you read paragraph 3.1 into the record.

A. Paragraph 3.1; is that it?

Q. Yes.

A. The heading is "Material"—"The insulation shall be a thermo-plastic type of compound meeting the dimensional, electrical and physical requirements specified in part 3. The insulation shall be applied directly to the surface of the conductor or the conductor covering and shall fit tightly to that surface."

[fol. 1247] Q. Does that make any distinction between copper and aluminum as the conductor metal?

A. No.

Mr. Bergson: I offer Defendant's Exhibit AR-27 for identification.

Mr. Melchior: No objection. The Court: I will receive it.

(Defendant's Exhibit 27 for identification received in evidence.)

Q. Now, I invite your attention to part 7, page 5, and particularly the paragraph 7.3.1 entitled "Scope." Would you read that section into the record?

A. (Reading) "7.3.1. Scope. This section covers secondary and service drop cables composed of one or more polyethelene insulated conductors and one neutral conductor for use as a supporting member. These cables are for use on circuits not exceeding 300 volts to ground."

- Q. Does this section make any distinction between copper and aluminum as the conductor?
  - A. It does not.
  - Q. These have been received.

#### The Court: Yes

[fol. 1248] Q. I now show you a document which has been marked/ for identification as Defendant's Exhibit AR-28 for identification, which is entitled "IPCEA—NEMA Standards Publication, rubber-insulated wire and cable for the transmission and distribution of electrical energy." Are you familiar with that publication?

A. I am.

Q. Is it published by the same group that published the previous document?

A. Yes.

Q. Do you know whether it is still in force!

A. Yes, this is still in force.

- Q. Now, I invite your attention to Part 7, page 7, and particularly to the paragraph numbered 7.4.1 entitled "Scope." I ask you to read that paragraph into the record, if you will, please.
- A. "7.4.1. Scope. This section covers secondary and service drop cables composed of one or more neopreneinsulated conductors and one neutral conductor for use as a supporting member. These cables are for use on circuits not exceeding 300 volts to ground."
- Q. Does this specification make any distinction [fol. 1249] between copper and aluminum as the conductor?
  - A. It does not.

Q. Now I invite your attention to Part 3, page 1, and particularly to the paragraph numbered 3.1, and would ask you to read that paragraph into the record.

A. (Reading) "3.1: Material. The insulation shall be of vulcanized rubber carbon meeting the dimensional, electrical and physical requirements specified in Part 3. The rubber hydrocarbon in the insulation shall consist essentially of natural rubber or synthetic rubber, as specified in Table 11. The insulation shall be applied directly to the surface of the conductor or conductor covering, and shall fit tightly to that surface."

- Q. Is any distinction made there between copper and aluminum as the conductor?
  - A. No distinction.

Mr. Bergson: I offer Defendant's Exhibit AR-28 for identification.

Mr. Melehior: No objection.

The Court & Received.

(Defendant's Exhibit 28 for identification received in evidence.)

[fol. 1249a] Mr. Bergson: Your Honor, I am about to change subjects.

The Court: Yes, we will recess until two o'clock.

(Whereupon, at 12:45 p.m. a recess was taken until

[fol. 1250]

AFTERNOON SESSION

APPEARANCES: Same as Morning Session.

RUDOLPH SCHATZEL, resumed the stand, and testified as follows:

Direct examination. (continuing).

# By Mr. Bergson:

Q. Mr. Shatzel, if a company had an extruder for extruding polyethylene and an extruder for extruding neoprene, and a twister and test equipment, I mean and test equipment for triplex, what other products could it make other than line wire and triplex?

A. It would be just an extrusion equipment?

Q. Yes, never mind the drawing and stranding equipment.

A. And equipment for testing triplex, that is the only thing to be decided?

Q. Yes.

A. That is all it could make.

Q. Now, what other equipment and what sort of know how would a company have to have to make the more sophisticated type of products that Rome was making?

A. Well, that would be a line of copper and thermoplastic insulated cable, of the range that Rome made. [fol. 1251] And assuming that they have the space, they have the building, they would have to start, of course,

with mixing equipment for rubber, which would include weighing, storage, and mixing mills, strainers and storage place for insulations, cooling equipment for compound, because some of it would have to be specially cooled, refrigerating equipment for water. Then, of course, that is assuming that they already have equipment, vulcanizing equipment, but they would need some extrusion equipment, which we ordinarily call pan-curing or batch curing for larger sizes, such as some of these samples here (indicating), and vulcanizers, deep panning equipment, lead extrusion, heavy cabling; they would need tape, braiding of various types and sizes, not just one size, because you run the gamut of small to large, and braiding from not only textiles but metals including copper, steel, aluminum. And, of course, packaging equipment for all of this.

And then, of course, there would be testing equipment of a wide variety covered by the specification which we put in evidence this morning of the IPCEA-Nema, none of which is required for the either line wire or triplex. [fol. 1252] I won't go into details on that, but that is rather considerable. Just for the electrical equipment. Mechanical equipment for testing the rubber and plastic insulations and special equipment for measuring moisture absorption. Equipment for measuring the environmental attacks, such as mold and low temperature up to minus 80 degrees centigrade; minus 65 is the standard government requirement. Equipment for measuring the effect of temperatures up to around 200 degrees centigrade anyway for certain type of insulation.

There would be a variety of small equipment that they would have plus personnel to do the testing, a laboratory man for compounding of rubber because we don't buy rubber compound, we make them; design them, change them; modify them; both to fit the requirements of customer specification and to take advantage of the advance in the art which we hope may be somewhat in the lead of some competitor.

And I think that is about the setting up of a rubber plant for insulated wire, and that is what it is.

Q. Well, now, when you said the laboratory personnel, [fol. 1253] would there be any other type of personnel

you would need for know how? Would there be any addi-

tional know how required?

A. Oh, engineering, yes. Yes. I meant to include that as laboratory, but it isn't ordinarily so. That is, in the design of cable and in the servicing of customers.

- Q. Now, let's forget these complicated structures, and let's get back to the insulated or covered line wire and triplex. Can copper and aluminum line wire and triplex be insulated on the same machine?
- · A. Oh, yes.
- Q. Now, let's go back one step further in the operation. Can copper and aluminum be drawn on the same machinery?
  - A. Yes.
- Q. That's going back two steps, I guess. The intermediate step is stranding. Can copper and aluminum be stranded on the same machine?
  - A. Yes.
- Q. Now would you describe the process by which the copper or aluminum rod is drawn down to the various sizes of wire?
- A. Well, that, essentially, is describing the machine. [fol. 1254] The aluminum rod or copper rod—you said aluminum rod?
  - Q. I said either.
- A. (Continuing) is taken to a wire drawing machine, and this machine consists of a unit which has a capstan lubricating system which pumps a lubrication, in the case of copper, a solution or a dispersion of oil in water. Relatively low percentage of oil, or soap, or a combination of oil and soap, is pumped over the wire, and acts both as a lubricant and a coolant. As it goes into the die and around a capstan in this case, a capstan that is in a vertical plane. Well, a capstan is purely a smooth wheel around which we wrap the wire, and it pulls the wire through the die. The wire drawing machine consists of a number of these units. The die box, a lubricating unit for pumping lubricant, and a capstan arrangement in parallels, and the wire goes through a series of dies, usually nine to thirteen on these machines. Could be smaller or less number, but I doubt there is many more than 13.

And that reduces the wire usually by about 20 per cent

reduction area in each pass through each die.

Q. Now, is each pass a different wire gauge size? [fol. 1255] A. Each pass is not exactly a wire gauge size. It is close to it, but it finally reduces this wire to about —well, if it starts out with 3% rod to a wire, that's about what we would call a No. 8. That would be .125 inches in diameter. And if we want to draw it further than that, we repeat that process on smaller machines.

Q. Now, you mentioned when you drew copper you use an oil and water lubricant. If you wanted to draw aluminum on that same machine, what would you have to do?

A. Well, then you would change the lubricating system, and the lubricating system in that would be a heavier soluble oil or a more or less heavy emulsion of a mineral oil. We avoid the use of mineral oil in copper. We use it in aluminum. But there are people that use mineral oil in copper, also.

Q. Now, would the machines have to be cleaned?

A. Yes, they need to be cleaned. The two solutions are not compatible, so you just—good housekeeping—you would clean the machine thoroughly.

Q. How much of a job is it to clean the machine?

A. Well, it takes quite a little doing to get all of [fol.1256] this oil out, so you don't contaminate your solution, whether it's copper or aluminum, and it would take a couple of hours.

Q. Now, after the wire is drawn, if you want to strand

it, how is that done?

A. Well, it's the same process as in making rope. We have a number of different types of stranders, where a single wire or group of wires is led through a central guide and a series of spools of wire are then rotated and lay up—first, generally, a layer of six, then twelve, and so forth, in layers around that central core. Now, that is the usual type of concentric strand in which—I say lay up—we usually reverse the direction of lay, so we put first on the left hand, then on the right hand, then on the left hand, and so forth.

Q. Now, the same machinery, you said, can be used to strand copper and aluminum?

A. That's right.

Q. What is necessary to switch over from copper to aluminum, or switch from aluminum to copper. Is there

any step necessary for that?

A. No particular step. We, however, since aluminum is a somewhat softer metal, we take a little more care. [fol. 1257] Sometimes use a wooden or softer guide in the—rather than steel guides, but steel guides are used. Outside of that precaution, why, we wouldn't have any change:

Q. And when you insulate, you can insulate interchange-

ably without any intermediate steps? :

A. None whatever.

Q. Now, directing your attention to the period when Rome Cable first began to insulate aluminum wire and cable, did Rome encounter any technical problems in shifting over from copper to aluminum of any consequence?

A. No.

Q. Did Rome hire any new technical personnel?

A. No.

Q. Do you know a Mr. Fuller?

A. Yes, very well.

Q. What is Mr. Fuller's full name?

A. Truman S. Fuller.

[fol. 1258] Q. When did he—did he ever become employed by Rome Cable?

A. He became a consultant for Rome Cable.

Q. And for what purpose was he retained when he became a consultant for Rome Cable?

A. He became a consultant, I don't believe I mentioned a date, but in either January or February of 1954, and he became a consultant primarily to assist in general metallurgical and other laboratory problems. But it happened that I had known him for a great many years very favorably, and when he retired for General Electric, he happened to mention that he was retiring and I asked him if he would like to come up and spend a few days with us. He spent three days a month.

Q. Was he retained for the purpose of assisting you in your aluminum wire and cable products?

A. Not specifically, no.

Q. Did he-what was his primary function?

A. Well, he had a considerable experience in a wide

variety of materials. He had, at the time he was the head of works laboratories of all the General Electric plants and had also the position as chairman of what they called [fol. 1259] their metals committee, which was a committee to coordinate their use and efficient use of metals of every kind within all of their various plants, to see that each plant had the information that was available one to the other and was using it. And so he had a very broad knowledge of all kinds of materials, and had a very specific knowledge of copper, where he had done a considerable amount of work. But our main use of him was purely as a consultant in the laboratory that contained a great number of young men. And we felt that he could stimulate and coordinate and get them working better as a team. That was his primary purpose. He did it very well.

Q. Was he hired because you felt you needed help in

working with aluminum?

A. No.

Q. Now, you testified earlier that Rome made only the smaller sizes of ACSR, the size 4/0 and under. Those I think you testified were primarily distribution products. Did Rome at any time give consideration to manufacturing the larger sizes of ACSR, the transmission size?

A. It gave consideration, yes.

Q. And what was the result of the consideration? [fol. 1260] A. Well, the results were we decided not to do it.

Q. And why did you decide not to do it?

A. The first thing was that we did not have the specialized technical personnel, engineering. We did not have all of the equipment that was needed. And I think others would be more competent to testify to this than I am, but we did not feel that we had a market that we could compete in: that we had no standing in the market: and that we didn't have the specialized sales force necessary for it. It was just too large a problem at the time for us to enter. While we did need a small amount and in the small size to round out our line in the primary distribution field.

Q. Now, Mr. Schatzel, I show you a document entitled "Aluminum and general meeting held January 15, 1952," which is Government Exhibit 69, and invite your atten-

tion to the middle of the third paragraph, and I will ask you to read that into the record.

A. (Indicating) This paragraph here?

Q. That one.

[fol. 1261] A. All right. "It looks as if we would not be in the ACSR until May, 1952 of early 1953. Both Schatzel and Rolston agree that if we produce one million pounds of aluminum per month we would need ACSR in our line."

Shall I continue on that?

Q. Yes. Of ahead.

A. "Fraser questioned on how our insulated accounts could help for ACSR business. Schatzel said we would need tensile equipment, but our testing requirements would be 25,000 less as wouldn't need modulus testing. According to Rolston, 500,000 pounds a month of ACSR would represent billings of \$225,000. Fraser will pass this information on to Ellis."

Q. What type of ACSR were you talking about there?

A. Well, I was talking about primarily, since I said in that there (indicating) that we would not need the modulus testing equipment, that is the only key I could see, to the smaller sizes. If we were going into the larger size we would need modulus testing requipment.

Q. So that you were talking about the size of ACSR

that you subsequently did go into?

[fol. 1262] A. Or slightly larger, but not the full line.

Mr. Bergson: You may 'cross-examine.

Cross-examination.

# By Mr. Melchior:

Q. Mr. Schatzel, we enjoyed very much this morning your explanation of all these products. And I was particularly impressed by the designation you had on a number of them. I believe you testified that these products with an A designated on the exhibit were manufactured and sold by Alcoa prior to the merger, and those that are designated with an "R" were manufactured and sold by Rome prior to the merger. And those with both "A" and "R" were manufactured and sold by both. Is that correct?

A. That is correct.

Q. There seemed to be a number of them that had "R" on but no "A".

A. That's right.

Q. I believe you made some comments with particular respect to AR-18, which as I recall was the one designated "Other representative Rome Products." That is over here, Mr. Schatzel, the second one from the end. You see, down here, sir.

[fol. 1262a] A. Oh, yes, I see it.

Q. You won't have to get up.

A. I can follow it from this (indicating) too.

Q. Yes. o

A. Yes, thank you.

# [fol. 1263] . By Mr. Melchior:

Q. I believe you indicated that that very well represented the wide variety of products manufactured by Rome which were not manufactured by Alcoa?

A. That's right.

Q. You described this as a broad line of product?

A. Described which?

Q. These products made by Rome that were not made by Alcoa?

A. Yes, I did.

Q. Would you compare this line of product that was made by Rome Cable prior to the merger with the other wire and cable companies that you were familiar with at that time? Would you consider Rome to have a very broad line of wire and cable products, or a restricted line?

A. Well, it is difficult to define for you, "broad." We had a broad line in one respect, but not as broad as some others, so—

Q. For example.

A. Well, for instance, we did not have as broad a line as General Cable, Anaconda, Phelps-Dodge. I presume there would be others. Let's say that we had as broad a [fol. 1264] line, but in different lines than, let's say, Essex. So that we were, I would say, intermediate.

Q. The first group of companies you mentioned, other than Essex, were all integrated copper companies, weren't they?

A. They would be integrated copper companies.

Mr. Bergson: Just a minute. General Cable?

- A. (Continuing) General Cable is not. That's right.
- Q. I see.
- A. Not Essex.
- Q. I excluded Essex. Other than Essex. But for the integrated copper companies and General Cable, do you think Rome's product line was about as broad as the other non-integrated companies, from your knowledge of the industry?

A. I would say it compared favorably, yes.

- Q. Wat it broader than Alcoa's ?
- A. In the wire cable industry?
- Q: Yes.
- A. Oh, certainly.
- Q. Substantially broader?
- A. Well, these samples here testify to that.
- Q. Represent that. Yes. You mentioned General Cable. [fol. 1265] Do you know of any company that has a broader line of wire cable products than General Cable? At the time of the merger, I am speaking of. The Rome-Alcoa merger.

A. That's of wire and cable?

Q. Wire and cable. That is conductor wire and cable products. The products we are concerned with in this proceeding.

A. No, I think they are representative of the broadest. There would be some that have different items in lines.

Others they don't have: It's a broad line.

Q. You were employed by that company for some years, weren't you, sir?

A. Yes, I was.

Q. Now, I would like to direct your attention to AR-21, which happens to be this document, entitled "Insulated materials." Do you have that before you, Mr. Schatzel?

A. Yes.

Q. There are a series of four you spoke of—AR-21, AR-22, AR-23, and Ar-24. Do you have those before you?

A. I have that right here.

Q. Now I would like to direct your attention specific[fol. 1266] ally to AR-22.

A. Would you identify that?

Q. That is entitled "Insulating Materials, Thermoplastic." The second one.

A. Yes. Thank you.

Q. Let me ask you this. The caption of this document is entitled "Insulating Materials, Thermoplastic." Does this document represent, in your opinion, a fairly complete representation of insulating materials of a thermoplastic nature?

A. Yes, I would say so.

Q. Is it complete, to your knowledge?

A. Well, to my knowledge, as far as I know it's com-

plete.

Q. All right. Now, directing your attention to AR-23, which is entitled "Insulating Materials, Thermosetting and there are two groups below that—rubber and compounding ingredients. Now, from your knowledge of the insulating industry, the insulating business, do you think this represents a complete listing of the various types of thermosetting insulating material?

A. If I could qualify this by saying that each of these types that I have put down here represents a family. [fol. 1267] For instance, I have put down here GRS type of rubber. Well, that represents—oh, probably 25 different rubbers. And butyl rubber represents at least ten. Represents families of rubber. So, as families, this is

complete. As individuals, it is not.

Q. I see. As families, then, the chart, is complete.

A: The same is true of the compounding ingredients.

Q. Fine. Now, with respect to AR-24, which is entitled "Protective Coverings," which has certain subheadings, entitled "Metallic, Fibers, and Non-Metallic Extruded." What would be your comment as to the completeness of this particular representation?

A. This, I think, is quite complete, with that same qual-

ification, that these will be families of materials. .

Q. In other words, you just didn't put down details of each one of these categories. There would be too many.

A. Yes. That's right.

Q-Now, with respect to these three tabulations, AR-22, AR-23, and AR-24, I believe you testified with respect to [fol. 1268] which of the categories Alcoa manufactured and sold, and which Rome manufactured and sold?

A. Yes.

Q. With respect to AR-22, if I understand your testimony, you indicated that the only one utilized by Alcoa was high molecular polyethylene, is that correct?

A. Yes.

Q. But with respect to Rome, you indicated that Rome used all the others except irradiated polyethylene?

A. That's correct. .

Q. Now, with respect to AR-23.

A. (Interrupting) Might I ask, if you are referring now to the present, or prior to—

Q. Well, I think when you testified, was it not as of

the time of the merger?

A. At the time of the merger.

Q. Yes. That's the import of my questions.

A. All right.

Q. Now, with respect to AR-23, which are your thermosetting insulating materials, if I understood your testimony, you stated that Alcoa, prior to the acquisition, used none of these insulating materials, but it did sell neoprene rubber GNW type as an insulator for conductors? [fol. 1269] A: Yes.

Q. Is that correct?

A. Yes, it sold triplex and line wire insulated with that

type of compound.

Q. I see. Then with respect to Rome, prior to the merger, I believe you stated that Rome used all types of these except certain of them which you considered to be somewhat experimental, at the time, and I believe you designated three or four categories, is that right?

A. That is correct.

Q. Finally, with respect to the protective covering, AR-24, I believe you testified that Alcoa did not use any of these protective coverings for its conductor materials, whereas Rome used all of them?

A. That's right.

Q. Now, from the standpoint of type and varieties of insulation, how would you characterize Rome's product line as compared with other companies engaged in the business of insulating conductor wire and cable from a broadness of product standpoint? Would you characterize it as broad line?

Q. Well, I want your answer, whatever it is.

A. I would qualify, then, that a broad line of insulated cable would include varnished cambric and paper cable of various types, and some of the silicon rubber type and compounds with these of varnished cambric as well as the very high temperature plastic type tethylon which Rome was not a factor in.

Q. Rome was not in that field of insulation?

A. None whatever.

Q. Was Alcoa?

A. Neither one.

Q. But as far as your protective coverings were concerned, how would you characterize that? Are there any protective covers that are not shown on this tabulation? Any general categories? Or is this a pretty complete—

A. This is pretty complete. Now, Rome's participation in some of it is small, as for instance, steel wire armor, or

steel tapes.

Q. Well, I didn't mean to inquire as to how much, but they were in that line.

A. They were in that line.

Q. They were in all of these lines?

[fol. 1271] A. To some extent.

Q. And this is as far as you know a fairly complete line of protective coverings?

A. Yes, this is supposed to represent the industry.

Q. Mr. Schatzel, I wonder if you would tell me exactly what triplex is. You used that term in your direct testimony?

A. Well, triplex is a three-conductor cable in which the two—there is two insulated conductors and a bare or neutral conductor and in which the two insulated conductors are twisted with a specified lay. Around the bare neutral conductor. That conssitutes triplex.

Q. Would you tell me the difference between triplex and

duplex?

A. Duplex, there could be—generally duplex cable, and I think perhaps we will have to go to the exact definitions here—but duplex cable would be generally two conductors

and—but the designation very often is concerned as two parallel conductors rather than two twisted. Such as these two wires over here is a duplex—I will have to look up the ASA definition, if you don't mind, and see just [fol. 1272] what that is, but it's used—pardon me. Well, this defines them as twisted. Duplex is a cable composed of two stranded conductors twisted together. Used in the industry, though, it may not be stranded. It's two conductors twisted together.

Q. Is duplex used for the same purpose as triplex?

A. Yes.

Q. For what purpose is that?

A. That's for service to a house.

Q. I see. Now, would you distinguish triplex from quad-

ruplex for me?

A. Well, quadruplex is a cable in which there is three conductors twisted around the neutral. Four conductors in all.

Q. Is this used for the same purpose as triplex?

A. It is generally used for the same, but for a larger or different type of an establishment. It might be an apartment house or a shopping center or something of that—

Q. Where a little heavier load is required? Is that it?

A. Or a different type of service, yes.

Q. Tell me the difference between these three, if any, and multiplex cable.

A. They constitute multiplex.

[fol. 1273] Q. All three of them constitute a category known as multiplex?

A. That's right.

Q. Now, Mr. Schatzel, would you tell me the difference between multiplex cable and weatherproof wire. You used those terms this morning, I believe, in your testimony.

A. Yes. Weatherproof wire is in some cases a misnomer, because the cable usually of a large size such as we are talking here of a million circular mils or 4/0, we have a number of strands twisted together, is called—if you had those in steel, that's a steel cable. Or it's called a cable in itself.

[fol. 1274] Q. We are talking about weatherproof wire.

A. I know it.

Q. Mr. Schatzel, we don't use steel cable as weather-

A. But you are using a stranded conductor as weather-

proof wire.

Q. I want you to tell me about weatherproof wire.

A. Weatherproof wire is simply a single solid conductor or stranded conductor with a covering over. Not an insulating covering, but a covering.

Q. Weatherproof wire is represented by a, is it the

bottom three wires on that last-

A. That's right.

Q. -exhibit?

A. That's right.

Q. That is weatherproof wire. What is weatherproof wire used for!

A. Well, it is used as this chart I mention here, for distribution and it is used for service drop; both.

Q. It is used for both. Is there a difference in the volume of usage as between distribution and for service drop [fol. 1275] purposes? Can you estimate what the use is today?

A. There is, but I imagine it is larger-I have no fig-

ures.

Q. From your knowledge of the industry can you form an opinion?

A. It is a larger use of weatherproof wire in distribution than in service drop, certainly.

Q. Can you give me an idea on a percentage basis?

A. No, I couldn't.

Q. Is it more than 50 percent used for distribution of all the weatherproof wire used?

A. I would imagine so. I have no knowledge.

Q. You have no knowledge?

A. No.

Q. How long have you been familiar with weatherproof wire, Mr. Schatzel?

A. Oh, about thirty years.

Q. How long have you been familiar with multiplex type of cable?

A. Ever since it started use.

Q. And when was that?

A. I have no knowledge. In 1946.

Q. Was that when it was developed? [fol. 1276] A. Yes.

Q: Do you know who developed it?

A. We did.

Q. And by you, who do you mean by we?

A. Rome Cable.

Q. Rome Cable developed it?

A. Let me say triplex as such has been a type of wire for a long, long while. And it has been used for services to houses for a long, long while. But the particular type of triplex that we are talking about, where we have two conductors twisted around a bare neutral, has only been used since 1946 in any volume.

Q. I see.

A. Before that it was insulated conductors but still

triplex.

Q. Now, I am talking about the type that Rome Cable developed, which I think is the subject of the discussion here today. Would you say that the use of triplex has been on the increase since 1946?

A. Oh, certainly.

Q. It is a growing product?

A. I think so.

[fol. 1277] Q. And you say it is used for service drop purposes?

A. And distribution.

Q. And distribution. And I believe you said weatherproof wire is used for service drop purposes and also for distribution?

A. Right.

Q. Now, directing your attention to the service drop function, have you noted any trend in the use of either triplex or weatherproof? Is there a noticeable trend over the last several years?

A. Yes, I think there is a trend. It is towards triplex,

but I have no exact figures on this.

Q. But from your knowledge of the industry and all its commodities, you say that triplex is on the increase?

A. That's right.

Q. In other words, if there were a new housing development out in some part of Utica and service entrance cable were to be used, you would form an opinion as to

what the possibilities might be as to whether they would use triplex or weatherproof line?

Mr. Bergson: I think you said service entrance. I think what you meant was—

[fol. 1278] Mr. Melchior: I meant to say service drop.

A. You mean triplex for service drop?

Q. Triplex as service drop or weatherproof wire as service drop.

A. If a new development, I imagine that it would be

triplex.

Q. In other words, can I conclude from your remarks that triplex is replacing weatherproof for service drop

purposes?

- A. That is the conclusion that in some cases we couldn't make because it is a matter of company policy of a utility. I know regions where company policy is that triplex will not be used.
  - Q. Can you tell me-

A. But from the approach countrywide I think that

might be the logical conclusion.

Q. Mr. Schatzel, directing your attention to this electrical layout, this first chart, I would like to ask you about one little item on there. At the very end, AR-12, do you have that before you?

A. On this.

- Q. It is entitled "A typical electrical system." [fol. 1279] A. Yes, I have that.
- Q. If you will note at the end of the system you have conductors running to what appears to be residential premises.

A. Right.

Q. And one is by open wire; one is by cable and one was by residential underground.

A. Yes.

Q. Now, on the open wire representation, what would probably be used there for service drop purposes?

A. Weatherproof or line wire.

- Q. Yes. Now, on the cable what would probably be used?
- A. That would be, it could be any one of these cables that we see here.
  - Q. Your service drop cable?

A. Any one of the service drop cables.

Q. Yes. Now, the one I am interested in is the residential underground. Would you tell me what—we know which ones you mean.

A. Yes.

Q. On residential underground, would you tell me what [fol. 1280] type of conductor is used in that situation? I don't believe you brought that out on your direct testimony.

A. On that copper is generally used.

Q. Copper as a metal conductor?

A. Yes.

Q. Well, would you use weatherproof wire underground?

A. No, weatherproof is not an insulated wire. This requires an insulated wire.

Q. Would you use triplex underground?

A. That is not an insulated wire for this purpose, no.

Q. Now, directing your attention to AR-19, Mr. Schatzel, which is the last exhibit—I think you have a picture of it—

A. Yes, I do.

Q. Do you have it before you now? And in particular products numbers 8 to 11 inclusive.

A. Yes.

Q. Can you tell me when those particular products were developed, about?

A. Well, it is at different times. Products 10 and 11

were developed in the early thirties.

Q. How about 8 and 9, do you know about those! [fol. 1281] A. They were somewhat later, probably in the late thirties.

Q. In the late thirties?

A. Yes.

Q. Now, how widely are these products used in the in-

dustry, generally, from your knowledge?

A. The first two have been used, I don't know at the present time, the first two were the only type that was used for many years. And so they are in service and used in all sections of the country. That is with copper. Pardon me, that would be number 11.

Q. You are talking about number 11?

A. Yes.

Q. On AR-19!

A. That's right. 10 is used and has been used recently, but I wouldn't know to what extent. It is not large.

Q. It is not large?

A. No. 8 and 9 is confined to certain sections of the country and in those particular sections it is probably, well, it is the largest type used, like in Kansas City and some other localities. But overall again, around the whole [fol. 1282] country, it would not be large. It would be a relatively small percentage.

Q. I see.

A. But they are in continuing use.

Q. Were these products manufactured by Rome Cable prior to the merger?

A. These were manufactured—well, No. 10 was not. With aluminum, was not manufactured.

Q. I didn't hear the last part.

- A. No. 10, as far as I know, my best recollection is, was not manufactured with aluminum prior to the merger, although I can't be sure of that.
- Q. Do you know whether those four products are manufactured by Rome-Alcoa today?

A. They are manufactured by Rome.

Q. By Rome?

A. Yes.

Q. Can you give me an indication of what your sales or shipments were in the last year when you were employed on a full time basis?

A. No, I can't.

Q. Can you give me a percentage?

A. No. I could only say that compared to the other types [fol. 1283] that you have on here, triplex and weather-proof, it is small.

Mr. Melchior: Oh, I see. No further questions.

Mr. Bergson: No redirect, your Honor.

(Witness excused.)

Mr. Adler: Mr. Hemeter.

LESLIE H. HEMETER, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

#### Direct examination.

### By Mr. Adler:

Q. Please state your full name.

A. Leslie H. Hemeter.

Q. What is your position?

A. At the present time I am retired.

Q. And when did you retire?

A. November 1st, 1960.

- Q. And what was your position prior to your retire-
- A. After the Rome Cable-Alcoa merger I was assistant vice president and general salesmanager and prior to that time I was assistant product manager for a number of years.

[fol. 1284] Q. And your employer prior to the acquisi-

tion?

A. Aluminum Company of America.
Q. Aluminum Company of America?

A. That's right.

Q. During the period prior to the acquisition of Rome Cable when you were employed by Alcoa, what were your responsibilities?

A. For how long a period of time do you refer!

Q. Well, let's take the period from 1957 until the acquisition in 1959.

A. From 1957 on I was in charge of field service for overhead transmission, distribution lines for sub-stations in the 48 states and Alaska.

Q. And what did you-

- A. In addition to that, because I had construction men scattered around over the country, I took on some additional work, some of which was to keep up with the competitive situation that we were experiencing all over the country.
  - Q. In the sale of what products?
  - A. In the sale of cable, both bare and covered.
  - Q. In connection with that latter duty or responsibility,

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did you undertake a systematic program for determining the competitive situation?

[fol. 1285] A. We had some forms that we had our salesmen to fill in on every prospective job that they knew of that was coming up. They would fill out half the form when they learned of it; they would finish the form when the job was completed.

Q. What were these forms you refer to!

A. They were what we call potential business reports. They gave the name of the company, the size of the cable involved and the amount of aluminum weight that was in the job. The name of the line if that was known. In some cases it might give the year's requirement for a particular company or contractor.

Q. Would that information that you just described be in the top half of the form?

A. That's right.

Q. Now, I believe you testified that there was a bottom half of the form that would be returned when the business—

A. When the job was completed that would be filled out. It would tell whether we got the business, whether someone else got it, what the price was if it could be determined, and as I say, who got the job if that could be [fol. 1286] determined. Sometimes it took a matter of time to find that out.

. Q. How did the salesmen know the identify of the competitors who got the business?

A. Well, there is a number of different ways. On governmental jobs, for example such as TVA and Bonneville and so on, there are sales bids opened publicly and read, so that would be public information. With private utilities and contractors sometimes the salesmen would be on very friendly terms with them and they would give them the information as to who the order was given to. If they were not given that, if they knew the conductor was to be used on a given line they would later on go out when the line was being built, if it was one of my field service men, and observe the cable reels that were being used to pull the cable off and build the line with, and those reels would have the name of the manufacturer on.

Q.4 Would you say it was part of the salesman's job to learn which competitors were getting the business?

A. Absolutely. That was a part of it, because I wanted

to know what our competition was,

Q. How complete was the coverage or potential [fol. 1287] business report program in terms of the

amounts of total business involved?

A. That is somewhat of a hard question to answer, but I would say probably better than 75 percent at least, because there were oftentime jobs—now I don't know who supplies power to this City of Utica, but whoever the power company is may give an order out to a company for cable without ever calling for bids. They might figure they had a good price from some salesman and they would place the order without ever sending out an inquiry. Our salesman might never know of that job. So of course he wouldn't enter it on his report.

We had one or two salesmen who unfortunately were not as much on the ball as they should, and they didn't give in as complete reports as they should have. But by and large they did a very complete job, as best they could find out, on all the business that was being placed.

Q. And this covered a large part of the prospective cable

business, so far as Alcoa was concerned!

A. I would say 75 percent or more, and I might say that [fol. 1288] on some of these prospective business forms salesmen would list, they would make out separate reports for lines that might be going up maybe four or five years away, and we would have those so that we would know when they were going up.

Q. Did you use the potential business reports in con-

ducting your sales program?

A. We used these potential business reports to keep a very accurate record of all the business that was placed with the competitors and if we knew who got the business it was listed on that competitors' name. In some cases where we were unable to find out who got the business, we had a list of what we called "unknown competitors", giving the competitive business report number and the date and the price.

Q. Excuse me, did you use the information as to com-

petitive prices in your business?

A. That was one of the important points in that connection. If we found that we could tell whether our competitors were going out and cutting prices and if a job was going up we knew something about what we had to price in order to meet the competition.

Mr. Adler: Will you mark this.

#### [fol. 1289]

#### OFFERS IN EVIDENCE

(List of jobs, et cetera marked as Defendant's Exhibit AR-29 for identification.)

Q. I show you defendant's Exhibit AR-29 for identification and ask you to tell the Court what that is.

A. Well, the first one on the page happens to be-

Q. Excuse me, would you just tell the Court what the entire document is.

A. Well, it lists the particular jobs that were lost, gives the customer, the date of the final report, the potential business report number, the amount below schedule that it was sold at, the conductor size and the pounds of aluminum.

Q. Was this based on the potential business report?

A. That is correct.

Q. About which you testified earlier?

A. That is correct.

The Court: What time period does it cover?

Q. What time period does this cover?

A. That began in 1957. I am not absolutely positive, [fol. 1290] but I think there are reports that go back to April of 1957, because we sent out a letter about the 12th of April, 1957, requesting the salesmen to send this information in.

Q. In other words, the potential business report program started in April?

A. That is correct.

Q. Of 1957?

A. That is correct.

The Court: How long did it continue?

Q. How long did it continue?

A. To my own personal knowledge, it was going when I quit the company, the 1st of November, 1960.

[fol. 1291] The Court: Does this exhibit take up from 1957 to 1960?

The Witness: Yes, sir.

Q. Now, Mr. Hemeter, could you describe your procedure in preparing this particular—first of all, was this

prepared by you or under your supervision?

A. The majority of it I did myself. Some of it was prepared under my supervision, and since these reports came in they were put on the list because we considered them very important and my immediate supervisor, who was production manager, was extremely anxious to keep up with the competitive price situation all over the country.

Q. This summary, I believe you testified, and I want this straight—takes the information from the bottom half of the potential business report?

A. That's correct. In other words, the completed part of

the report.

Q. Yes. And it is listed here according to the competitor to whom the business was lost?

A. That's correct.

Q. What was your purpose in preparing this summary?

A. Well, back in 1957 we ran into a great deal of competition when prices were being cut all over the country, [fol. 1292] and in order to give us an idea of the business that was in the offing, and what we had to quote in order to get our share of it.

Q. Excuse me. My question was, why did you prepare this summary listing business loss under various named

competitors?

A. Well, we wanted to know how much each competitor

Q. Do you consider this a reliable guide, who your major competitors were!

A. It was the most reliable information we were able to

obtain.

Mr. Adler: I offer Defendants' Exhibit AR-29 in evidence.

Mr. Melchior: We object to the introduction of this document on the ground that it is hearsay twice removed, and the witness has testified it is only about 75 per cent correct. The witness testified he only prepared part of it himself.

And the general unreliability of the figures contained therein.

The Court: Well, are there foundation documents avail-

ablet

Mr. Adler: Yes, your Honor, they were made available to the plaintiff.

[fol. 1293] The Court: If the foundation documents are

available, I think it is admissible.

Mr. Melchior: I don't think they have been tabulated or are included in here. We have been supplied with a number of documents in addition to the business reports.

The Court: That is my question. If they are available to you so you can check them as against the accuracy of the chart. All this is a summary of these foundation documents, as I understand it. Instead of my going through that, which would be quite a job, he has done it.

Mr. Adler: That's right, your Honor.

. Mr. Melchior: I am not sure that the summary indicates clearly which of the foundation documents have been summarized.

Mr. Adler: It shows on the document the potential business report number so and so, and so on, listing the number.

Mr. Melchior: The objection was made, your Honor, to the—your Honor, the problem here is that the defendants are attempting to base a tabulation on this, and this is based on even more remote material. In order to know what [fol. 1294] this problem is, we would have to look at Defendant's pre-trial Exhibit D-19, which I don't believe has been given an AR number as yet, and at the bottom of D-19 there is indicated. "Source of data," and it says, "Summary of Alcoa's lost business reports and Rome's sales orders." This is headed up merely business lost to them. It mentions the name of the company and as it goes through business lost to certain other companies. There is no way of knowing precisely which of the raw material has been tabulated here. As a matter of fact, the Government attempted to tabulate it and was unable to do it.

The Court: Doesn't that go to its weight rather than its admissibility? After all, it is a report like Fosdick's 12 or 15 pages, it's simply a summarization of some foundation documents, and that's all this is.

Mr. Adler: Your Honor, we submit further that is simply a business record. Mr. Hemeter has testified that as these reports came in, he took the information from them and put it right on here. This in itself is the business [fol. 1295] record admissible under the Business Records Act.

The Court: Well, it may be, and especially if the foundation documents are available. If they are not, you should

make them available to the Government.

Mr. Bergson: They are available.

The Court: And have they been available?

Mr. Bergson: Yes, your Honor.

The Court: Well, I think it is admissible. I will receive it.

## By Mr. Adler:

Q/ Now, referring to Defense Exhibit AR-99, was there a section of that report or summary captioned "Business Lost to Rome Cable"?

A. We have one section that was lost to Rome Cable. Here it is.

Q. Would you read to the Court the items of business lost to Rome during the period beginning April, 1957?

A. On February 24, 1958, we received a final report on Lawns Electrical Co-op, Incorporated, light and power company potential business report 1803. Cable was sold at 1.68 cents below schedules Conductor was No. 2 ACSR stranded. [fol. 1296] It was 17,400 pounds of aluminum. On January 9, 1959, we lost a job to Fort Wayne Municipal Light and Power Company, potential business report 6279, it was \$3.45 pcf thousand feet below schedule. And it was a covered conductor wire. It was 5,055 pounds.

Q. What was the total number of pounds there?

A. Total number of pounds would be 22,455 pounds. That is all the records we have of lost business to Rome.

Q. Do you recall ever computing the total poundage of aluminum reported lost?

A. I did at various times, but I did not before I left the company and in fact I didn't the last year I was there, so that I wouldn't be able to answer that. But there were probably altogether here, at a rough guess I would say

probably between seventy and eighty million pounds in this period 1954 to 1960.

Q. To which you testified 22,000, was it-

A. Oh, no. I was-

Q. Lost to Rome?

A. Seventy million altogether in that length of time, and I may be low on that.

[fol. 1297] The Court: A little over 22,000 lost to Rome.

The Witness: That's right.

Mr. Adler: Out of seventy plus million.

## By Mr. Adler:

Q. When your salesmen were unsure as to the identity of the competitor who got the business how did you handle that for the purpose of this tabulation?

A. They said so, and that they would try to get the information later, and oftentimes it might be a couple months later they would come back and tell who got it, because they would be out, and see the reels and conductor being built on that particular line, so they could identify who it was sold by.

Q. If you were in doubt as to the identity-

A. We put in "unknown."

Q. That is the category in this document?

A. Yes.

Q. I refer you to GX-353. If you would read this paragraph, beginning here—

A. Oh, yes. I might explain to the Court that one of the things I did while I was in the company, I put out monthly an electrical conductor division newsletter which went out to all the salesmen and field men so they would have an idea [fol. 1298] what was going on. This part you want me to read is as follows:

"Competition, like death and taxes, cannot be avoided. But throughout the years it does change. Before World War II our conductor competition was with copper, whereas today it is with other manufacturers of aluminum. The sale of transmission line years ago, our peddlers—and we had some good ones—often were faced with lower competitor's prices than the price for equivalent ACSR. As a result they

had to show that the cost of the completed line would be less with ACSR than with copper."

Q. In making that statement, Mr. Hemeter, were you

referring to bare or-

A. Bare conductor in that case.

Q. Were you referring to covered!

A. We had no covered in those days. That was all bare conductor.

Q. When you started to sell the covered, which the testimony has been were all made for you originally on a toll basis and you started selling conductor, would that statement have held true, that is, that your competition was

with the aluminum companies?

A. It was both with aluminum and copper. In the be[fol. 1298a] ginning some of the companies still wanted
to use copper for covered conductor. They were afraid of
aluminum because there was a problem, they thought, but
due to the price differential between copper and aluminum
it was not long before most of them began to switch over
to covered aiuminum conductor.

Q. It was being sold by—
[fol. 1299] A. Other aluminum manufacturers, as well as Alcoa, of course.

Q. No further questions.

#### Cross-examination.

# By Mr. Melchior:

Q. Mr. Hemeter, is this the report you prepared over the period from sometime in April of 1957 until the time you left the company?

A. That's correct.

Q. Was this the final form of your report?

A. I notice here these are mixed up. As I kept them, I kept the different companies together, separated. Now these, I notice, are mixed up.

Q. It is not the way you prepared it, in other words?

A. Well, somebody just gathered it all together.

Q. Can yoù tell whether it is complete?

A. Well, I can tell that it goes up to—I can tell by looking at these reports—here is April, 1960, one of them. When I left in 1960, of course, I did not keep these reports,

and I haven't seen them since. They did go up into 1960 with these.

Q. I'm looking at the—

A. I think there were some, perhaps, later than as shown [fol. 1300] here, because the latest I notice here are April in 1960.

Q. I am looking at the business loss to Essex. I see that goes up to 1958.

A. Lost to who?

Q. Essex.

A. Essex pretty well folded up as far as competition is concerned.

Q. What do you mean by that?

A. Well, I don't know whether they have gone out of business or not, but we just didn't get any competition from them.

Q. They didn't give you any more competition. I see.

How about Peranite? Is that complete?

A. Well, the latest one I have is February, 1960. It was never one of the major competitors. The major competitors were Kaiser, Reynolds, and Anaconda. Southern Electric used to be a big one until they sold out to Olin, Mathieson. Then they were not so big. Southwire was a fairly big competitor.

Q. Do you have any way of knowing whether records of all your competitors are here? Would there be any way for you to tell? Since this report has been changed around, I [fol. 1301] am wondering whether it is complete now. I wonder if you can tell.

A. Well, I could separate this and pick them out and I

could tell very well that way.

Q. Do you know how many competitors you had? How many did you tabulate? How many different companies?

A. Well, we had Kaiser, Reynolds, Anaconda, were the integrated companies. We had Southern Electric and Southwire. We had Central Wire and Cable. We had Nehring Electrical Works. We had Peronites, Essex. And we had Texas, I can't think of that name now. We had a Texas concern that went for a very short while and it went broke. Went out of business. Toxas Wire and Cable.

Q. Did you notice there were a smaller number of competitors when you completed your employment than when

you started making this tabulation in 1957? Were there a a smaller number of competitors that you had to tabulate?

A. We were not running into much competition from Essex at that time. What had happened to them, I don't know.

Q. I don't believe you answered my question. You started tabulating this in 1957, let's say there were so many com[fol. 1302] panies who were your competitors then, and you were tabulating them in 1957.

A. Texas Wire and Cable went out of business, as I mentioned. Essex pretty well folded up, as far as competition. Except for those two, I don't think of any others that

dropped out.

Q. Now, did you just tabulate the business you lost to aluminum competitors? I notice your last column is "pounds of aluminum." Does that mean when you lost the sale, your successful competitor sold them aluminum?

A. In these cases the competitor sold aluminum.

Q. You know that?

- A. Oh, yes, because that's what this is. We were primarily selling aluminum, and that's what we were keeping a record of.
- Q. But you did keep this record up in 1959, and the year 1960?

A. That's right.

Q. Were you selling copper then, weren't you?

A. We were not.

Q. You mean Alcoa was not?

- A. Alcoa, as a copper—we might have sold a very small amount of triplex, where they had a copper neutral, but that was so minor it just didn't amount to anything, and [fol. 1303] we would not have kept a record of the copper in that case. We would have kept only of the aluminum.
- Q. You didn't tabulate all the sales that Rome lost, then, after the merger!

A. Oh, no, we didn't tabulate Rome at all.

Q. I see. Well, now; I am looking at first one—the group as it was given to us. Your first was business lost to Anaconda. Do you have that on top?

A. Yes.

Q. I notice there it says, "Date of final report." Now, what does that mean—"final report"?

- A. Let's take the first one there. The date of final report-June 4, 1957, Iowa Power and Light. The initial report, when they learned of that business, might have been in 1 January of that year, and they would send in that Iowa Power and Light was in the market for some conductor, so many pounds. When that order was placed, they would complete the report and send it in and that would show whether we got the business or whether it went to somebody else.
- Q. In other words, this first sale you lost to Iowa Power and Light, the final report was dated 6/4/57?

  [fol. 1304] A. That's right.
  - Q. You may have gotten an earlier report on that sale?
- A. The first half of that potential business report may have been dated several months before. On the other hand, the salesman may have only learned of that at that time, and completed the entire report at one time. But the purpose of the report was to tell what business was in the offing, so they could be watching for it. Occasionally they didn't know of it until the business had been placed, and they might have completed the whole report at one time.

Q. When did you make that entry on this list-that

6/4/57 entry—when did you make that?

- A. Well, it would have been only a few days after. Just as soon as I got the report mailed to me at Pittsburgh I put it down.
  - Q. It would have been some time shortly after 6/4/57?
- A. Oh, yes, sure. It would have been just a few—three or four day afterwards.
  - Q. It would have been in this particular form?
  - A. On that list ever since.
- Q. I notice the next one is Connecticut Light and Power and that is dated 4/26/57. When did you enter that one? [fol. 1305] A. I entered it after I entered the one of Iowa. Power and Light, because sometimes the salesmen were late getting those reports in. He might have held that report up to find out who got the job. Sometimes they would hold the report up a month or two before they sent it in, trying to find out who got the job.

Q. What date would they put on their report?

A. They would put the date the job was let. This 4/26/57 would have been the time the job was placed.

Q. Well, it says, "Date of final report."

A. All right.

Q. But actually that is not what it is. It is the date the contract is let.

A. The date of the final report is the date I gave on that last half or it, and the last half of it might have shown, and sometimes would show, the date when the order was actually placed.

Q. Where would the date appear on his report?

A. It would appear on the bottom half of it. Now, if it was all completed at the same time, he would show the date on the top and the bottom.

Q. In other words, when you would get a potential business report, sometimes you would have two dates on it—a [fol. 1306] date at the top and a date at the bottom.

A. That's correct.

Q. What would the date at the top be?

A. That was when they first learned of the job coming up. We had potential business reports dated, we will say, in 1958, which showed jobs that wouldn't be coming up, maybe, until 1963 or 1964.

Q. And the second date was the date when the contract

was let?

A. When the business was awarded.

Q. That's the date you entered on this list?

A. That's the date I entered on that.

- Q. This list you made up as the reports came in was sort of a ledger entry, was that it? As each one came in you just added it?
  - A. As it came in.
  - Q. You didn't make up this list all at one time, then?

A. Oh, no, no.

Q. What did you do with this report? Was this report ever reduced to writing in any way? Did you pass it on to any of your superiors? How did you use it?

A. It was typed off. We had typewritten lists of this and gave them to my superior from time to time, about twice a

year. He would want a typewritten list.

[fol. 1307] Q. What sort of report did you make twice a year?

A. Simply copied this off.

Q. Give it to him in that form?

A. Give it to him in that form.

Q. Didn't make any comments on this report, or draw any conclusions.

A. No. There were none necessary, because that showed what we had lost.

Q. The document speaks for itself.

A. That's right.

Q. Now, did you, in turn, tabulate any of the business that you were successful in getting from other companies?

A. Yes. I did that. Monthly.

Q. Monthly?

A. And my bose got that report. I did not send—I sent out a letter monthly giving general information, but I only listed on that the orders of 100,000 pounds or more. I did not list the smaller ones. But that list was there for the boss to see.

Q. I see. Was this of any particular size order or all orders that were lost?

A. This was all orders, big and little. If you will notice there, you will see some that are quite small. Some of them [fol. 1308] quite big. 5,000 pounds; 7,000 pounds; here is one for 374 pounds. So I listed them all.

Q. All that you got information from?

A. That's right. Well, I listed all the reports that came in.

Q. You had no way of knowing whether the report was accurate. You had to rely on the reporting salesman?

A. Yes, certainly. But on the whole, we had a very excellent group of sales nen.

Q. Now, I believe you said you began preparing this tabulation on these ledger entries around April 12, 1957?

A. The letter requesting these to be sent in was written and sent out under my boss' signature—I wrote the letter—draft of it—and then sent it out under his signature, and it was dated either the 12th or the 20th, I think the 12th of April, 1957. Naturally there was a little delay before they began coming in.

Q. Do you recall what this letter stated?

A. Yes, I can tell you briefly what it was. Competition was extremely rough, and in order for us to get our share of the business we had to know what our competitors were [fol. 1308a] doing, and what prices they well selling cable

at. And we—this potential report, such as we were asking for, was a trial horse, more or less. We were trying it out in our department to see how it would work. The management had approved it, and requested everyone to comply with the information requested, and send it in.

[fol. 1309] Q. Do you know whether there was any particular incident or set of circumstances which prompted man-

agement to send out this letter?

A. We have been losing quite a bit of business to competitors at lower prices than scheduled and the only way that we could get our share of it was to know what our competitors were quoting. And by taking such a record as this we could find out something about what prices they were quoting and be able to meet them.

Q. Are you or were you familiar with other reports used by Alcoa such as business change reports? Did you ever

hear of that? Business change report?

A. I didn't see any of those. There were some lost business reports at one time, I believe, but I never got those.

Q. "Lost business reports"?

A. Lost business reports. But I didn't get those. And it was because of the so-called lost business report which didn't prove out very satisfactory that my superior decided that this type of information was required and asked me to write or prepare a draft of a letter to the salesmen asking [fol. 1310] for this information, and that is what I did.

Q. Do you know what the difference between the lost business report was and the report which you had prepared which I believe you called the potential business report, is that right?

A. That's right.

Q. What was the difference?

A. The lost business report gave nothing more than information that they had lost a job to somebody. This potential business report told what business that was coming up in the next few months or a few years, and would give us warning so that if anything happened to that salesman and he was transferred and another one went out there, he would have the information to follow up on that job.

- Q. These two reports did not duplicate each other then?
- A. No, sir.
- Q. You were not in charge of the lost business report?

- A. No, sir.
- Q. Do you know who was?
- A. They went I believe to my superior.
- Q. Will you identify him?
- [fol. 1311] A. Mr. P. T. Coffin.
  - Q. P. T. Coffin.
- A. But I do know that not a great many of them were sent in because the salesmen hated to report business that they had lost, and they didn't.
  - Q. The salesmen hated to report business that they lost?
  - A. Naturally they would.
- Q. And these lost business reports didn't work out too well?
- A. They didn't work out too well. They didn't give us the information we needed, so we wanted all those which were more complete.
- Q. Were these the same salesmen who made these reports?
- A. They were the same salesmen who made these reports, and they did an excellent job.
- Q. They did an excellent job on yours, but not on the others?
- A. They quit the lost business reports 100 percent and they went to these.

The Court: Take a short recess.

The Clerk: Court is in recess.

(At this point a recess was taken after which the trial [fol. 1312] was resumed.)

#### By Mr. Melchior:

- Q. Mr. Hemeter, are you familiar with the new business report entitled New Business Report?
  - A. I have never seen it.
- Q. And I asked you about business change reports but I don't believe I got an answer:
  - A. I am not familiar with that either.
  - Q. You are not familiar with it?
- A. That is evidently used by a different division in our company.
  - Q. I see.

A. I beg your pardon, when I say "our company," it is because I am no longer part of it.

The Court: Well, it is all right, call it yours.

The Witness: Thirty-four years and eight and a half months, and it is hard to get out of the practice.

Mr. Melchior: You may examine.

Mr. Adler: Would you mark this for identification.

(Summary marked as Defendant's Exhibit 29-A for identification.)

[fol. 1313] Mr. Melchior: Your Honor, we have not been supplied with a copy of this. This accounts for the delay.

Mr. Bergson: We had not intended to offer it, your Honor, except for the cross-examination.

Redirect examination.

## .By Mr. Adler:

Q. Mr. Hemeter, I show you Defendant's Exhibit AR-29-A for identification and ask you to tell the Court what that is.

A. Well, it is just a summary that I prepared for my boss in November 25, 1959, which gave a summary of the pounds of aluminum we had lost to our various competitors since April, 1957, and lists all the different companies that we lost to.

Q. I notice on it there has been a handwritten change of

dates from 1959 to 1957.

A. Well, that was the secretary's mistake, because she was dating this November 25, 1959, and she gave it the lost business report, which was dated as 1959. That is incorrect. It should be 1957, which is what I put on it.

[fol. 1314] Q. Was this the type of typed report which you testified on your cross-examination that you would pre-

pare from this handwritten document?

A. That's right. Periodically.

## OFFERS IN EVIDENCE

Mr. Adler: I offer in evidence Defendant's Exhibit AR-29-A for identification.

Mr. Melchior: We object to that, your Honor, on the same basis that we objected to the raw material upon which it is

10-

based, and with the additional reason that there is an error shown on the face of the document.

The Court: All that this is is an addition, I suppose, of the figures contained in the last exhibit up to a certain date.

Mr. Adler: Yes, your Honor.

The Court: So that all it is is a matter of convenience.

Mr. Adler: Yes.

The Court: Overruled.

The Witness: That happens to be my own handwriting, the 1957.

The Court: Yes. That is what Mr. Melchior I think means [fol. 1315] by an error on the face of it.

The Witness: That's right.

The Court; Overruled. I will receive it.

(Defendant's Exhibit 29 for identification received in evidence.)

Mr. Adler: No further questions. We would like to withdraw that and have copies made for everybody.

The Court: Well, in a quick glance at this Exhibit 29-A, your greatest loss to competitors was really to integrated companies, wasn't it?

The Witness: That is correct.

The Court: So you had competition from integrated companies as well as independents?

The Witness: Oh, yes. The Court: All right.

The Witness: And I might add just one thing for clarification, that this potential, when these potential business reports came in, the initial part of them, they would fill in [fol. 1316] when the cable order would be placed. It might be immediately, it might be three months, six months, a year, whatever it happened to be. I kept them in an accurate file and every couple of weeks I would go through this and if the time, says the three months or whatever it was, I would write to that salesman and find out what had happened. It might be that the time had been extended for another six months and I corrected it. But I followed that up all the time to see that these were up to date.

Mr. Adler: That was a plan you had followed on the lost

business?

The Witness; I had not followed the lost-business. On

this I did. The lost business didn't tell anything except that it is gone. This potential business report told when it was time to be placed and if that time had passed and the report had not been sent in, then I could write and find out what was holding it up.

Mr. Adler: All right. Thank you. I have no further

[fol. 1317] questions.

Mr. Melchior: No further questions.

(Witness excused.)

Mr. Bergson: Mr. Ellis.

CHARLES H. Ellis, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

# By Mr. Bergson':

Q. Mr. Ellis, will you please state your name and address?
A. Charles H. Ellis, Williams Road, Mounted Route,
Rome, New York.

Q. By whom are you employed?

A. Rome Cable division of Alcoa.

Q. In what capacity?

A. Vice president in industrial relations.

Q. How long have you been employed by Rome Cable Division of Alcoa or by its predecessor company, the Rome Cable Corporation?

A. Since April of 1936.

Q. Now, what positions have you held in Rome Cable

Company?

[fol. 1318] A. I was in charge of rubber wires and magnet wire for the first eight months, from April to around November; then I was made production manager of all the operations. The plant was new at that time.

Q. And you had, you were in charge of production at... Rome Cable Company from this period until when?

A. Continuously until January 1st, 1961.

Q. And were you an officer of the Rome Cable Corporation?

A. I was

Q. Were you a. director?

A. I was a director.

Q. Now, when Rome Cable first went into the wire and cable Jusiness, so far as you know what metal did it use as a conductor metal?

A. Copper.

Q. And when did it begin using aluminum as a conductor metal?

A. I am not sure of the exact date. I believe it was around 1950 or '51.

Q. Was that during the Korean war period?

Yes.

[fol. 1319] Q. Now, prior to the 1951 date did Rome manufacture insulated line wire and service drop cables?

A. Prior to when?

Q. Prior to 1951.

A. Yes.

Q. With what type of insulation?

A. Both neoprene and polyethelene.

Q. And did you make a product known as triplex?

A. Yes.

Q. And with what type of conductor metal did you make that product?

A. Copper.

Q. When did you—when did Rome begin insulating copper line wire and triplex?

A. 1948 and 1949.

Q, Now, that was true for both line wire and triplex or just triplex?

A. The records indicate the line wire was 1948 in the neoprene type and polyethelene; and multiplex service drops type was in 1949 in neoprene and polyethelene multiplex. So in 1949 or between 1948 and '49 we were making both of them.

Q. This was before you went into aluminum?

[fol. 1320] A. That's right.

Q. Now, you said you began using aluminum in 1950 or '51.

A., Either '50 or '51.

Q. What products did you make with aluminum when you began to use aluminum as a conductor?

A. I can't tell all the products. I think we did make a

line wire of the multiplex type.

Q. Now, when you began manufacturing line wire and multiplex cable with aluminum as a conductor, what new equipment, if any, did Rome acquire?

A. When we first started we acquired no new equipment.

Q. You made a product on the same equipment that you were making copper on?

A. That is for the operations that we used, yes.

Q. When you first went into the production of aluminum line wire and triplex, did you draw and strand your own wire?

A. I know we didn't draw our own wire. I am not sure. We may have bought some individual wires and stranded some.

Q. Then at a subsequent date you began drawing your own wire!

[fol. 1321] A. That's right.

Q. How soon after you began insulating the wire did you begin, I mean drawing it?

A. It was over a year. It was the early part of 1953 when

we started drawing the wire?

Q. When you began to draw aluminum wire did you buy any new equipment?

A. No.

Q. What did you do?

A. We took an old rod drawing machine and just changed the dips.

Q. An older copper machine?

A. That's right, an old copper machine.

Q. And changed the dip. Now, how much of an investment was involved for Rome Cable, if you know, to get into the business of drawing, stranding and insulating aluminum wire or cable?

A. Originally?

Q. Originally, yes.

A. It was very little. It was less than \$5,000.

Q. Now, during the period that you began drawing and stranding aluminum, did you give consideration to making your own rod?

[fol. 1322] A. Yes, we did.

Q. Out of aluminum. And when did you start drawing

your own, making your own aluminum rod?

A. We started experimenting on it, we had our first installation I believe in 1953 for making the rod. It was very close to a year before we were able to make a completely satisfactory EC rod for redraw.

Q. So from the period from 1951 until late 1953 or 1954 you purchased EC redraw rod and drew, stranded and insu-

lated it; is that correct?

A. That is correct.

- Q. Now, when did Rome decide to manufacture a product known as ACSR?
  - A. You say decided to? ...

Q. Let's put it this way. When did Rome begin the manufacture of a product known as ACSR?

A. I couldn't give you the exact dates on that because I don't know. That had to do with the dates on which we first purchased the steel that would make ACSR and that I would presume was very close to the time when me made any of the aluminum strand.

Q. All right. At the time you began to make ACSR, what

[fol. 1323] size of ACSR did you make?

A. We made the smaller sizes that complimented the types of wires we were making the insulation on.

Q. This would be size 4/0 and smaller?

A. Definitely.

Q. Did you at that time give any consideration to whether or not you would manufacture the larger size of ACSR?

A. Yes. I think it was discussed that, what it would take to produce larger sizes.

Q. What was discussed?

A. Well, we were required several times to give estimated lists of equipment that would produce, I will say, limited production in the range of sizes required for the larger than 4/0.

- Q. And what was the conclusion that was reached?
- A. We finally decided not to do it.,
- Q. And what was the last time that the question of whether or not Rome should go into the larger size of ACSR—strike that. I lost myself on that. Strike the whole question.

Did there come a time when Rome no longer considered

the question of whether or not it should go into the larger [fol. 1324] sizes of ACSR?

A. To my knowledge there was a time when we dropped

it from consideration and it did not come up again.

Q. And that was when?

A. That was in 1956.

Q. Now, what were the problems, if any, that Rome faced

in the manufacture of the larger sizes of ACSR?

A. Well, from the manufacturing standpoint it called for additional equipment, especially in stranding. We had stranding equipment, but in the larger sizes it was not of the type necessary for the production of ACSR. It was used for the more flexible, for the more softer type of copper wire. So we were faced with installing very high priced stranding equipment. Basically outside of the stranding, and we were willing to try more than this, which would be the things we had to have.

Q. From the manufacturing standpoint?

A. That's right.

Q. How about testing equipment?

A. We had no testing equipment for evaluation of long line transmission type of ACSR.

[fol. 1325] Q. And you would have needed that?

A. We would have needed it.

Q. And how about engineering skills for the larger sizes of ACSR?

A. I can remember discussions in executive committee and the statements of the vice president in engineering and sales—I would have to admit that my knowledge of what was required, and I can't corroborate that, I found it was necessary to have a skilled engineering group not only for the sale and service of the wire but the design of the systems and all the other factors that went with the ACSR equipment.

Q. Now, you testified that when you originally went into the manufacture of wire and cable with aluminum as a conductor, you used equipment that had been formerly used for drawing and stranding and insulating copper.

A. Copper.

Q. Now, is the machinery that you have in the plant today capable of being used for drawing copper as well as aluminum?

- A. Yes.
- Q. And stranding copper as well as aluminum? [fol. 1326] A. Yes.
  - Q. And insulating copper—
  - A. Yes.
  - Q. -as well as aluminum?
  - A. Yes.
- Q. And if you draw copper on a particular machine and you subsequently want to draw aluminum on it, what steps are necessary in order to make the change?
  - A. Just provide means to supply a different lubricant.
- Q. And you clean up the contamination that existed before?
  - A. Yes.
  - Q. And this is true with drawing and stranding?
- A. To a lesser degree in stranding. Sometimes you have to clean them up.
- Q. Is there any problem of cleaning up or change of lubricant in insulating?
  - A. No, there is no problem. It takes a little time.
- Q. Now, when you change from copper to aluminum or aluminum to copper on your insulating equipment, does that take any time?
- [fol. 1327] A. Hardly. With the machine you don't know the difference.
- Q. Now, when you first made copper triplex, what equipment did you use to twist the various elements of the triplex?
- A. We had some old combination twisters we used for a variety of purposes. I believe it was New England Butt Twisters.
- Q. Now, are New England Butt Twisters common items of equipment in a wire and cable company?
- A. Yes. Older wire and cable companies we find have several of those machines.
- Q. Now, if a company had equipment to manufacture line wires and triplex, both polyethelene and neoprene, and it had twisting equipment, would it need any other equipment to make the more sophisticated and complicated products that Rome Cable Company makes?
  - A. Yes.
- Q. You heard Mr. Schatzel testify on that. Would you generally agree with his testimony as to what was necessary?

A. I would agree fully, and that you would need additional bare wire equipment also, in that you would require in coat[fol. 1328] ings and other types and similar conductors than would be normally used, so there would be in addition to what he stated on the insulated type, you would need more than the bare wire.

Q. Now, if a company on the other hand had the ability to make, say, and the equipment to make building wire,

would it be able to make line wire and triplex?

A. If it had a full line of building wire it would have the

equipment to make this too.

Q. Now, you have heard the testimony about the tolling arrangement between Alcoa and Rome. And I think the record will show, I know the documents in evidence show this, that sometime toward the end of 1956 Alcoa had been producing its own polyethelene line wire and triplex which Rome had previously been tolling for it. Is that correct?

A. I believe I agree with that.

Q. Now, when Alcoa took its polyethelene covering business away from Rome, to what use did Rome put the equipment that had been used for covering Alcoa's polyethelene

line wire and triplex?

A. I am not sure exactly what the business conditions [fol. 1329] were, but there are two essential pieces of equipment involved as far as the insulating. One is a plastic extruder and the other was in this case a high speed twisting unit. The plastic extruders could produce both individual wires and base for multiple wires and building wires. It could produce a base. By base I mean single insulated wires which could have multiplex. It could produce the base for signal and control cables of the plastic type and it could produce a base for any variable type of plastic item that was in this list that was shown.

Q. Were those machines put to other use after Alcoa stopped ordering this line wire made of polyethelene and triplex polyethelene?

A. Yes, they were used.

Q. And do you recall what they were used for?

A. Well, the line wire machines I believe weren't, a certain amount were distributed from building wires and we had very little use for the Edwards machine for the amount that was on there. However, the machines could be con-

verted for other products where there had been created an

increase in the company.

[fol. 1330] Q. Now, Mr. Ellis, I show you Government's Exhibit No. 60, GX-60, which is a memorandum from Mr. Fraser to you dated October 2, 1951, entitled "Aluminum project," and I ask you to read the first paragraph of that memorandum or letter.

A. "The estimated cost for capital items under the project of casting, rolling and drawing aluminum is \$283,530.00. This is made up of the items in the attached list. There may be a few expense items such as lighting and ventilating changes, but they will be of a minor character."

The second paragraph?

Q. Yes.

A. "The main items of equipment are the Ajax melting and pouring furnace with a capacity of 2000 lbs. per hour; the Properzi casting wheel and rolls; a 10-die Vaughn drawing machine. This machine is recommended in spite of the fact that the total cost of the project including it is \$9,589 more than a similar list including a drawing machine of the Southern Electrical type."

Q. Now, when you went into the business of drawing, stranding and covering aluminum, did you engage in any expenditure of that type?

[fol. 1331] A. Just the drawing and stranding, no.

Q. And the major part of this item is made up of what?

A. Major part is the Properzi, the so-called casting and rolling to produce the rod.

Q. To produce the rod. How much was that?

A. Of this unit?

Q. Of this 380-this \$283,000.

A. This particular unit, the actual equipment for producing the aluminum rod was estimated at \$125,000.

Q. Of the 283?

A. Yes.

Q. Now, is there an item in there for a Vaughn machine?

A. There is a drawing machine. That was \$65,000 on the one item and another item of \$70,000 with the dip system, \$5,000 additional.

Mr. Mahaffie: May I ask, is the witness referring still to Exhibit 60?

Mr. Bergson: Yes, and the attachments thereto.

Q. Was that piece of equipment to be used for the drawing of aluminum or copper?

[fol. 1331a] A. In this first estimate?

Q. Yes.

A. At this particular time we laid it out for aluminum.

[fol. 1332] Q. At a subsequent time, before you purchased this, was there an item of equipment identical with that that was for copper?

A. Yes.

- Q. I also invite your attention to Government Exhibit GX-68, which is entitled "Aluminum meeting held January 4, 1952," and ask you to look at the second paragraph of that document which refers to "E.R. Changes." What does "E.R." mean?
  - A. Executive request.

Q. For funds?

A. For funds for capital improvement.

Q: For how much?

A. You are speaking about this? 336,000? The furnace had been promised for May, and should be ready by July. Will Properzi equipment be available some time, having been promised in April?

Q. At the time that meeting was held, was Rome Cable already in the business of drawing, stranding, and insulating aluminum?

A. At was stranding and insulating, but not drawing.

Q. And when the Properzi equipment furnished, or when did Rome acquire the Properzi equipment?

[fol. 1333] A. The Properzi equipment included the ajax and everything ready to start to make rods went on our books in January, 1953, and I use that reference, because when the whole unit was assembled, ready to go, is the time the capital is placed on our books for depreciation.

Q. At that time were you able to make E.C. redraw rod of such a grade that you could use it in your aluminum product?

A. We were not.

Q. How long thereafter did it take you to make a suitable grade ?

- A. My recollection is it took at least a year; approximately a year.
- Q. Now, during the time between that memorandum and the period that you were producing suitable E.C. redraw rod, did you commence drawing aluminum yourself?
  - A. Yes, we did.
  - Q. From purchased rods?
  - A. Yes, we did.
- Q. Now, is it a fact that on occasions an item of equipment might be approved under an executive request and never purchased?
- A. Yes, maybe I could explain that slightly. The develop-[fol. 1334] ment of capital improvement lists for the executive committee would get general approval, but each request must come for a final approval with the executive committee at the time the engineering work is finished and the quotations and equipment are available.
- Q. So that at the time an executive request is approved you don't know exactly when the equipment will be installed, or whether it ever will be installed?
- A. No, we made numerous changes because changes would occur in the development of parts of the equipment, which was in the case of the Properzi. We visualized that we would produce rods in a consecutive manner. Remember, Properzi had rever been used to produce E.C. redraw rod at the time we purchased it. It had been used to produce rod for a wire at Nichols in Davenport, but that was not a conductivity between 61 and 62 per cent.
  - Q. That was wire for fence wire, things like that?
- A. And Mr. schatzel and myself and several others had to make the assumption that we could develop the characteristics of the rod to produce a satisfactory E.C. rod.
- [fol. 1335] Q. So that at the time of the approval of an executive request that was merely an authorization to start the wheels in motion, and maybe we will go through with it.
- A. We had the right to go back to the executive committee and make further recommendation of amplification or deletion, based upon the economics as we found it, or the experimentation.
  - Q. Thank you, Mr. Ellis. You may examine,

#### Cross-examination.

#### By Mr. Mahaffie:

Q. Mr. Ellis, would it be fair to say that an E.R. or executive request was in the nature of an appropriation of funds for a purpose?

. A. Yes, it's a request. It's an executive request initiated

by either department to the executive committee.

Q. What does it mean when an E.R. within the Rome organization has been approved? Does that mean funds in that amount have been approved for a certain use?

A. That's right.

Q. The exependiture has been approved?

[fol. 1336] A. That's right.

Q. So when this document which Mr. Bergson showed you, GX-68 states, \$336,000 approved to date on E.Rs. it's fair to say that as of this date \$336,000 had been appropriated by the Rome Cable Corporation for this project?

A. If you mean that funds were earmarked and set aside at that time and \$336,000, I wouldn't say that that was true. We had the responsibility, in a large project such as this, as the—for instance, as the Properzi unit itself, when we got quotations on something like that. If something came up, looked like there was going to be a difference in that cost, it was our requirement to go back to the executive committee and make continuous reports, and we could be changed in our approach in that both by the executive committee at any time or on mechanical engineering analysis, if we didn't want to go that way and ask for recommendations.

Q. Then funds had not been spent, and the amount could be changed?

·A. Correct.

Q. But it was approved?

A. It was approved.

[fol. 1337] Q. I have no further questions.

The Court: (To Mr. Bergson) Do you have anything else?

Mr. Bergson: I have another witness, your Honor.

The Court: I think we better quit.

(Whereupon, at 4:50 p. m., an adjournment was taken to Tuesday, February 20, 1962, at ten o'clock a. m.)

[fols. 1338-1339] [Title omitted]

#### Transcript of hearing-February 20, 1962

[fol. 1340] Mr. Adler: Mr. Xenis.

Are you ready, your Honor?

The Court: Yes.

Constantine Xenis, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

#### By Mr. Adler:

- Q. Would you state your name, please?
- A. Constantine Xenis.
- Q. What is your position?
- A. I am division engineer in charge of the Equipment Division and Development.
  - Q. For whom?
  - A. Consolidated Edison Company of New York.
- Q. Could you describe briefly the nature of the business of Consolidated Edison, the area it services and the number of customers and the like?
- A. Well, we have some two million eight hundred thousand electric customers. We are supplying Manhattan, Brooklyn, Queens, Bronx and most of Westchester with electricity and certain areas, certain parts of these areas we [fol. 1341] also supply with gas and some small parts we supply with steam.

Mr. Adler: Your Honor, I will attempt to qualify Mr. Xenis as to both facts and expert witness.

The Court: All right.

- Q. What academic degree or degrees do you have, Mr. Xenis?
- A. Well, I have a bachelor of science degree in mechanical engineering. I am a professional engineer, licensed by New

York State, and, of course, I have a number of affiliations with associated societies.

Q. Do you have any honorary associations?

A. Well, I am a Fellow of the American Institute of Electrical Engineers and I head a number of committees on several organizations, some of the AIEE, including some in the gas end of the business.

Q. Would you state, please, what the AIEE is?

A. AIEE is the American Institute of Electrical Engineers, which is a professional organization for electrical engineers. It is a national organization.

Q. Do you have any patents?

A. Oh, yes, I have some 30 or 35 patents in my name.

[fol. 1342] Q. And have you published papers or articles?

A. Many of them.

Q. Covering what subjects generally?

A. Well, covering connections, cable connections; covering special transformer designs used in the distribution system; covering protective systems for distribution systems.

Q. This would be in the field of electrical power distribution?

A. Yes, most of them are in that field.

Q. I think that is adequate. I show you, Mr. Xenis, Defendants' Exhibit AR-76 for identification and ask whether that was prepared under your supervision?

A. Yes, it was.

Q. Would you describe for the Court what that document

is, please?

A. Well, this was a study, an engineering and economic study which we undertook in order to determine and reach a policy as to whether we should be using aluminum or copper in our cables in a number of electrical distribution applications for our own specific system.

#### OFFER IN EVIDENCE

Mr. Adler: I offer in evidence Defendants' AR-76 for identification.

[fol. 1343] The Court: When was it made?

Q. Excuse me. When was that study prepared?

A. This study was completed on February 9, 1959.

Mr. Wertheimer: Is this D-325?

Mr. Adler: Yes, it is.

Mr. Wertheimer: We object, your Honor. We object on the grounds of hearsay. Mr. Xenis, from what we can gather only prepared the first three pages of the report. The rest were prepared in different sections by a number of other people. We also questioned the reliability of the report prepared in 1959.

Q. Mr. Xenis, were the engineers who worked on the various chapers or sections of this study under your supervision?

A. They were under my direct supervision, and I assigned the job to them, and, of course, worked along, and got the conclusions, and finally I drew what I believe to be the essence of that report and submitted it as indicated in the first three pages, which will be, you might say, the cream of that report as applying to our practice.

Q. And are the general conclusions reached in this report [fol. 1344] still being followed by your company today?

A. With one exception, where we had to revise our policy, our recommendations, here, in view of certain things that happened, that allowed us to change our mind in one component, which is the service drop that is used by our company. Certain things—

Q. But apart from that, the general analysis is still valid?

A. Still valid and being followed.

The Court: If I understand it right, Mr. Xenis, your study was prepared by several engineers under your supervision.

The Witness: Yes, sir.

The Court: Each one of them, or some of them, prepared partial—their results are contained in some of the pages of that report.

The Witness: Yes, sir.

The Court: Then what you did was to summarize the combined report.

The Witness: Yes.

The Court: And that summary, or conclusions, I think, are contained on the first three pages of the exhibit.

The Witness: Yes.

[fol. 1345] The Court: Overruled. I will receive the exhibit.

Q. Now, we have referred to the fact that there are three component parts of this study. Would you state what they

are, please!

A. Well, one part has to do with the use of busses, busses. Large copper conductors used usually in large buildings, or in connection with several large buildings. Now, that is one part. You don't wish me to give—

Q. No.

A. That's one part. No. 2 is overhead distribution, such as is generally shown on overhead lines mounted on poles. Not transmission lines, now, but these overhead distribution lines, which I am sure there must be many of them right around here. That is part 2. And part 3 is the underground in a city of the nature of New York City. Obviously you can't have your cables overhead in these big thoroughfares, tall buildings; everything is underground. And that, again, is controlled by different factors. Therefore, it was treated separately.

Q. Now, referring to the second part, the overhead distribution part, are your analysis and your findings pretty [fol. 1346] well reflected by the series of four tables con-

tained in the report?

A. Yes. Tables 1, 2, 3 and 4.

The Court: Can I keep this, Mr. Adler? • Mr. Adler: Yes, you may, your Honor.

Q. Will you describe for the Court what is shown on Table 1, and for the purpose of this we might confine your comments to one example—the thousand foot extension,

which is the third set of lines from the top.

A. Yes. Well, that particular table—again, now, let's concentrate on the overhead distribution system. That, again, had to be broken down into two components, because you have primary wire, you have secondary wire, and you have service drops. Each of these was studied individually, and then the components were put together in a package which represents a typical job, putting the proportionate amounts of each component to give you a reasonable average of a typical job. Now, Table 1 covers the primary wire which is usually—may vary in voltage—it is a higher voltage—1200, 2400, sometimes higher. Now, in that one—you want me to take the third item, which is for a thousand foot

[fol. 1347] extension. You notice we tried it for several lengths, and you are asking me for the thousand foot, and as you proceed from left to right, the upper line is for copper. The lower line is for aluminum. Certain costs apply to one and not to the other, or they may differ. They may apply to both, but in different amounts. So starting with the first one you have "Remove set of four deadends." I don't know that you wish me to go into detail on that. These are procedures of construction with each material. But in the case of copper you have an item there that is \$24.30. But there is no corresponding item for aluminum, because of the nature of the design. Then you go to the next item, you notice you have corresponding costs, which is the installation of four tension splices. You have certain elements of labor and material for copper, and considerably different elements for aluminum. Then you take the next set of items, again, labor and material for the installation of primary dead ends. You have to install the wire sag, meaning to give it the proper contour. Then you add all these items together, and you notice for copper it is \$385.98; for aluminum it is \$625.44.

[fol. 1348] We haven't considered cable costs yet. This is only materials as to connecting devices, mechanical devices

for doing the job. May I proceed?

Now, let's add the cost of the cable which is different for copper and aluminum. And we made a study for two kinds of cable, one where the cable has no insulation, the other where the cable has some insulation of the type that we use. Because while we were making this study there are changes in procedure. Some people prefer insulated wire, some uninsulated, and so we made a study for both. So when you add the cost for the cable and you look at the totals on the right-hand side-

· Q. Excuse me, what were the difference in the cost of the

cable itself on this example?

A. Well, on the bare cable, whether copper or aluminum. you notice copper was seven hundred and forty-nine dollars. and some cents and aluminum was three hundred and seventy-one dollars. In other words, the cable cost was much lower on aluminum.

Now, on the other hand, you have noticed that the other costs up to that point were in the reverse direction. The [fol. 1349] copper costs were lower, the installation costs, than they were in the case of aluminum. So when you add these two together, if you wish to compare, for example, the covered cable, you will compare line 2 with line 4 in that little group there, and you find that the costs are \$1,244.45, compared to \$1,280.72. Now, there is no significance in these two costs because they cannot be accurate to the last detail. Fifty or one hundred dollars in such an operation is a small item. So we conclude that the costs are about equal.

Q. Now, return to Table 2-excuse me.

The Court: You refer to the covered, there is a little more difference, not too much, I guess, on the bare.

The Witness: On the bare, yes, sir.

The Court: All right.

Q. You might turn to Table 2 and just briefly indicate-

A. Well, there we are taking the secondary wires. The primary wires bring the high voltage. You connect the transformer, which I am sure you see on poles, and you step down the voltage to what is a utilization voltage, 120 volts from post to ground. And there we made a study with [fol. 1350] two extensions, one for three hundred and one for six hundred. Which one would you like me to follow?

Q. If you could briefly indicate the factors on here.

A. Starting with, for example, with the 300 foot extension, then you have similar items of insulated costs, keeping the sag right and all that sort of thing, and you notice again under the column subtotal that the copper costs on that item are \$129.35 and aluminum \$162.02. However, now, when you take the cable cost of the conductor, the copper is higher, \$257.53 and \$196.58. When you put the two together, copper is \$386.88, as compared to \$3— this printing is not very good. May I use my original copy?

Q. Sure.

A. I can't read whether it is \$358 or \$338.

The Court: 58.

The Witness: 58?

The Court: Well, now, wait a minute. I had not better testify.

A. (Continuing) \$358.60. So again there is about a thirty dollar difference, which is about 10 per cent. Again I think

that is within the accuracy of the study. So again the con-[fol. 1351] clusion is that the costs don't differ materially, the overall costs.

Q. Turn to Table 3.

A. Now, on Table 3, here we discuss what we call the service drop from the line, from the secondary line you have to run some wires to the house, in that connection is what we call the service drop. Now, in there the first two items, for example, are comparable. In other words, No. 6 copper. this is the same type as No. 4 aluminum. In that occasion you take all the costs together, the comparison is \$35.16 for copper as compared with \$32.88 for aluminum. In the next largest size of service—by the way, these are the most common sizes, there are some exceptional ones which don't affect the study—here again the copper is higher, \$46.37 as compared with \$38.69, and we believe here, at least, in the case, second item, the difference is significant. It is some eight dollars and about forty cents, which is a significant difference there. Indicating aluminum as a service drop is a more economical service drop.

Q. Now, turning to Table 4, this is a little complicated,

but if you could summarize what it says.

A. Yes. Now, we have studied the individual components. [fol. 1352] Then we said let's take pieces of each one of these components and combine them together in the proportion in which they occur on the job, and then also after you make your installation, some day that installation is going to come down, and in one case you will have so much copper left, in the other case, if you have aluminum, you will have aluminum left. Therefore, the salvage value of the metal is important in this study. So we had to introduce there the present value of the ultimate salvage value of these two additions in order to get the comparative cost.

Now, if we add all that, I think it becomes simpler if we only look at the last group of figures. You have the fourth item in here. Now, you can make your comparisons now. Horizontally, copper to the left, is \$1897: \$1868 for aluminum. For the other sizes two thousand dollars compared to \$1960. And certainly as far as the package is concerned the two costs are very close. So, again, we reach the conclusion that there is no significant difference between the two systems, as far as first cost of installation is concerned.

Q. Prior to the time this study was undertaken, what [fol. 1353] conductor metal were you using in your over-

head primary and secondary distribution lines?

A. Well, of course, for a long, long time we have used copper. Then, I believe around 1950 or so, or maybe a little later, we began to use more and more aluminum. And even though we thought we engineered a design of connections properly, both we and certain other companies throughout the country had experienced some practical difficulties with our aluminum installations

Q. And as a result of this study what decision did the Consolidated Edison make with respect to the conductor

metal to be used in overhead lines?

A. Well, we decided to discontinue the use of aluminum because after all we were not saving any money and yet we exposed ourselves to certain practical difficulties that gave us trouble, service outlets, and complaints, so we said there is no money that can be saved, let's use the thing that works out practically best.

[fol. 1354] Q. Did you subsequently then modify this de-

cision in any respect?

A. Yes. The success of this kind of an installation depends on the quality and adequacy of the connecting device. Sometime, I believe it was early 1960-I may be off a few months—a connecting device came out on the market by one of the big manufacturers which was, in my opinion, radical in design and was based on an awful lot of research which. we were able to follow in the laboratory, and when this device became available, we felt that we could certainly use aluminum service drops only. This is a connection from the line to the house. Because we could put short copper connections at the line; we call them "pig tails." It is a very short copper connection leaving everything as it is and using these particular connectors to convert it to aluminum. This proved to be a very practical device, and there was no reason why we shouldn't now go to aluminum service drops, just that portion, and take advantage of the savings which I have indicated as we went along, which were in favor of service drops.

[fol. 1355] Q. On your primary and secondary main lines

you are continuing to use copper !-

A. Yes.

Q. On the basis of your description earlier of the area served by Consolidated Edison, would you say that your

system is primarily urban in character?

A. Yes. Let's say I believe we are not exactly typical. Our distribution system is not typical of what you would experience in general throughout the country. In other words, New York City is pretty well confined in its limits. There isn't much new territory you can add to it, so it is adding little pieces here and there to an existing system. To that extent, while other large cities may have some of this, I think practically all of ours that is covered in this study—Brooklyn, Queens, and the Bronx, I don't think those are exactly typical of national conditions.

Q. Would the type of economic analysis made in this study, taking into account labor cost factors, material costs required for installation and the like, be applicable to other

utility distribution systems?

[fol. 1356] A. Well, I'm sure if you take some utility that has a large city, undoubtedly there are areas in that system which would be fairly well represented by this. But I believe to a much lower extent than New York.

Q. Thank you. No further questions.

Cross-examination.

# By Mr. Wertheimer:

Q. Mr. Xenis, about how much of Consolidated Edison system is overhead and how much underground?

A. You mean areawise?

Q. I mean in terms of percentage of your entire lines. What percentage are overhead, what percentage are underground? Give us a rough figure.

A. I'm afraid I do not have the figure available.

Q. But you stated your system is primarily urban, and as I understand it in urban areas most of the lines are underground.

A. Yes.

Q. So your system would be primarily underground?

A. I think, certainly, if you are asking investmentwise, [fol. 1357] most of it is underground if that will answer you.

Q. Now, I notice that the tables that you had prepared for you in this study are concerned with additions or extensions of 300 feet, 600 feet and 1,000 feet. These are rather short extensions, aren't they?

A. Not for our system.

Q. Not for your system, but in terms of utilities in general?

A. I think you are right.

Q. This does not involve any major new construction?

Al. No.

Q. Any new construction of any consequence.

A. We don't have that kind.

Q. You are simply adding to an existing system, or perhaps replacing parts of the system!

A. Yes.

Q. Replacing, perhaps, one phase of a three-phase line,

something of that sort?

- A. Yes, we have some of that, but also you have short extensions. Now, I don't know if you are familiar with New York, but you may have an area, say, in the vicinity [fol. 1358] of Flushing where there is just land, maybe 12 acres, and they decide to build houses. All right, you may have a thousand foot extension from this side and a 600 foot extension from the other side. This is typical of the work we do.
- Q. Would you have any problem in adding, let's say, a single phase of aluminum to a three-phase line which already exists in copper?

A. You mean a single phase of aluminum to a three-phase

line?

Q. In other words, you are replacing one phase of a three-phase line.

A. On a great length?

Q. Let's say on a short length.

A. Well, would you like to consider primary or secondary, because my decision could be different.

Q. Secondary.

A. No, I think if you were adding an additional wire for the secondary, which is usually limited in length to the supply provided by one transformer, certainly you could take one new line and put it in by itself without getting into some of the problems. You could make it all aluminum. But when [fol. 1359] you start adding services and so on, you will run into problems; but I don't think you would get into those very much.

Q. Do you usually add the same type of conductor copper or aluminum when you make replacements on a line?

A. Not-necessarily.

Q. I would like to turn, Mr. Xenis, to Table 1 that you referred to in your part three aluminum overhead conductors.

A. Yes.

Q. Now, the date on that table is November 28, 1959. The report is dated February 5th, 1959.

A. Yes.

Q. Was this table done after your report?

A. 11/28/59 is what I have here for Table 1, and I wouldn't be a bit surprised if this particular table was reworked at various times and this addition was put on. I'd have to check that. In other words, when this letter of transmittal was prepared which gives the figures, we had tables to support it, and if the table is revised at any time, if an error was discovered, if some change had to be made, it could be changed there at any time to bring it up to date. Ifol. 1360] Q. Then of what date does this table speak?

A. This particular table would speak exactly of the date that is on it. But we apparently did not find it necessary to write another recommendation, because the conclusions did not change much. Must have been very minor changes.

Q. Let me direct your attention to—I guess it is the third vertical column—"Install set of four tension splices." In layman's language, is this putting in the connectors?

A. No. A tension splice is a mechanical device with springs inside of it, and it is a very economical way of extending a line. In other words, you have the connector, you insert this cable and this cable and you let them go and the spring grips them. They are very successful with copper.

Q. This is the joint that connects an existing line with the

extension to it?

A. Yes, with the other line. The extension to it.

Q. Is the cost given here the cost of installing an aluminum connection to a copper connection, an aluminum connection to an aluminum connection, or a copper connection [fol. 1361] to a copper connection?

- A. On the primary installation, everything is on the same metal.
  - Q. I see.
- A. When you are talking about an extension made directly-I have to qualify your question a little. Let me make this thing clear. Suppose you have a copper line, primary line and you want to add 600 feet to it. You could take one of these connectors that I have described and you could extend it, and keep on going. Now, if you had a copper line and you wanted to extend it with aluminum, you could not do it that way because we have not found any successful connectors that will treat aluminum on the same basis. There are some. We have tested them. We were never satisfied with them. The same way, if you have copper and change to aluminum, you cannot do it that way. So what you do, you come to a pole and make what we call a dead end connection. In other words, terminate that copper in a loop around a spool. Then you start your aluminum separately, and take the ends of that aluminum after you have clamped it and make a connection. This is not a tension [fol. 1362] splice. It will not stand tension, so you eliminate the tension from that installation.
- Q. There would be more expense in adding aluminum to a prior existing copper line?
  - A. Yes.
- Q. I notice from the four examples given here—300, 600, 1,000 and 2,000, that as you increase the length of the extension the economies grow in favor of aluminum.
  - A. That's right.
- Q. For a longer extension that would be even more pronounced?
  - A. Yes.
- Q. Turning to Table 2, Mr. Xenis, again I note the date is November 28, 1959. This was also revised after your covering report?
  - A. Yes.
- Q. But the conclusions you express in your first three pages are not affected by this later revision?
  - A. That did not have to be changed.
- Q. The examples given here, again, are for 300 feet and 600 feet. And here again, at least from these two examples,

[fol. 1363] as you increase the length of the extension the economies grow in favor of aluminum:

A. That's right

Q. Turning to Table 3, Mr. Xenis, I note that the figures given are for one three-wire service. This is the type of service you use now?

A. It is the most common size, yes.

Q. Do you use any others?

A. Well, there are locations where there is an existing two-wire service, and let's say it breaks and you have to replace it. The customer has no need for three-wire, and as a matter of fact his connection along his riser next to the house is only provided with two-wire, so we give him a two-wire installation. But by far the greatest number—most everybody uses appliances and wants three-wire service. There are occasions you replace two-wire, yes.

Q. Do you use the triplex?

A. Yes. The service drop.

Now, the figures given on Table 3 are as of January 28, 1959, is that correct?

A. Yes.

[fol. 1364] Q. And the costs expressed then, you state, are accurate today?

A. Oh, I wouldn't say that they are exactly the same, but—

Q. No, but within a reasonable range.

A. Let's say within a sufficient range that we have not found it necessary to remake the study and make another table and put it in.

Q. I see. I wonder if you recall a meeting of the Con Edison, 4KV committee, is that the way it is called, sometime in July, July 23 or 1959, at which time the question of service drop was raised? I believe a new connector was discussed at that time; do you recall that?

A. Well, I don't think I was at the meeting, as I recall.

Q. You are listed as present.

A. Then I was there.

Q. According to this report the use of this new connector would realize an annual saving of one hundred thousand to one hundred and fifty thousand dollars. Was this reflected in this table?

A. No.

Q. It wasn't?

[fol. 1365] A. When this table was made that connector was not available, or at least when the study was made that connector was not available. That came a month after the initial study was made. However, when you look at Table 3 these figures are not dependent. You see, we assumed that you have made the connection at the line.

- Q. Then the cost would be in one of the earlier tables?
  A. No, no.
- Q. Where would the cost appear then on these four tables?

A. When we went back to aluminum the costs that resulted are exactly the same as shown here, but very slightly reduces the saving with aluminum, very slightly reduces because of the addition of this little connector, which is something like 25 cents per service, something like that. It is a very small item. So if I were making this table over again and everything else remained the same, I would probably say that the aluminum in comparison to the copper would be slightly higher. But very slightly.

Q. You also spoke on your direct examination of a con-[fol. 1366] nector which was developed in 1960 which would have been subsequent to the meeting just called to your attention. Would that have affected the economies in any way?

A. Only to the extent that I indicated. Well, when this study was made the conclusion was if you study the overall package the company doesn't save money, so let's stay with copper completely. That was the first move.

Q. Yes.

A. Then later on when this connector became available and we investigated it, we said, all right, let's depart from that. Let's take the saving on the service drop as indicated in Table 3, because this connector is made available and permits us to do a good job. So when that connector became available we said all right, we will depart from this study with the extent of one component; we are going to change from copper to aluminum and take the saving because now we don't expect any other saving. I can go into detail how that was accomplished, but that is the case.

Q. And these two developments in technology, the first

in July, 1959 and the second in 1960 were the only changes [fol. 1367] in either technological developments or costs?

A. When you say two developments, I can only think of one development. The availability of this connector was the only one I can think of.

Q. This was the same connector?

A. Yes.

Q. And that was the only change that has been made?

A. The only one I know of.

Mr. Wertheimer: Thank you.

Mr. Adler: No questions.

(Witness excused.)

Mr. Adler: Mr. Isenhart.

ROBERT F. ISENHART, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

# By Mr. Adler:

Q. Would you state your full name, please?

A. Robert F. Isenhart.

Q. What is your position?

A. Manager of services division for the Dayton Power [fol. 1368] and Light Company.

Q. How long have you held that position?

A. I have been manager of services division for approximately two and a half years.

Q. What was your position prior to that?

A. Manager of purchasing and stores division.

Q. Have you indicated the name of your employer?

A. The Dayton Power and Light Company, yes.

Q. In the two positions you described did your responsibility include the purchase of wire and cable products?

A. I have been in charge with the responsibility for procurement since 1941 and the items of wire and cable are part of that responsibility.

Q. Have you been active in associations of buyers?

A. I have been active in the Dayton association for twenty or more odd years. Past president of that association. I have been affiliated with the Public Utility Buyers Group of NAPA.

Q. What is NAPA?

A. National Purchasing Association, for fifteen years. [fol. 1369] Past chairman in 1956 of the Utility Buyers Group.

Q. Of the

A. Of the NAPA.

Q. Where is the Dayton Power and Light Company located?

A. At Dayton, Ohio.

Q. To what area does it serve?

A. Dayton Power and Light services an area of twentyfour counties in Ohio.

Q. What were its gross revenues in 1960?

- A. The 1961 annual report just released reflects approximately \$101 million gross revenue.
  - Q. How many miles of electric power lines do you have?
  - A. We have approximately 14,000 miles of overhead line. Q. On what basis do you purchase wire and cable prod-
- ucts for use in your system?
- A. Generally we receive competitive hids for aluminum conductor.
- Q. Do you also receive competitive bids for copper wire and cable?
  - A. Copper or any other items that we might buy.
- [fol. 1370] Q. In general you purchase wire and cable on competitive bids?
  - A. On competitive bids.

Q. Are there exceptions to that?

- A. Depending on volume, there could be exceptions occasionally.
- Q. Now, referring to overhead distribution products, wire and cable products used in the overhead distribution phase of your system, which companies were invited to submit bids on those products prior to April, 1959?

A. Prior to 1959 our principal suppliers were Anaconda Wire and Cable; Aluminum Company of America; Central

Cable Corporation; Rome Cable; Essex.

Q\ Now, were there other companies who might have provided a satisfactory product who did not submit bids?

A. There are other companies such as Kaiser, Reynolds, General Cable, Olin, presently.

Q. Pardon?

A. Presently.

Q. What was your reason and what is your reason for not soliciting bids from some of these other companies that [fol. 1371] you named?

A. Our company is a service organization supplying electricity and gas to our area. Our responsibility is service to our customers. We chose to have dependable suppliers, I call them dependable, or a small number so that we have service from our suppliers, as our customers expect service from us, and it is an expensive proposition to ask everyone in the business for answers. Quotations take time and it is costly.

Q. Do you consider it important to be a relatively large customer of a few rather than a small customer of many; is that it?

A. I think that it is important that three or four companies share in the biggest portion of our business so that they feel that they have a large portion of our business and we then could expect good service from them and dependable service.

Q. In operating the utility system do you ever encounter emergency situations?

A. Occasionally we encounter emergency storm troubles where we are able to call on those suppliers that have served us and expect service from them, which they are always glad to give.

[fol. 1372] Q. Mr. Isenhart, on the basis of your twenty years experience as a buyer of wire and cable products for a utility and on the basis of your activities and position of responsibility in the utility buyers organization, is it your opinion that other utilities follow similar buying practices to yours?

A. I think this is generally true.

Q. Now, you referred earlier in your testimony to the fact that Rome prior to its acquisition by Alcoa was one of your suppliers. Did Rome submit competitive bids to your com-

A. Rome solicited business from us and they were asked

to bid on occasion and were given some business.

Q. Did you consider Rome to be one of the more competitive companies in a price sense, in competitive bidding situations?

A. They were very seldom awarded business on com-

petitive bidding.

Q. Is it your feeling that Alcoa by virtue of having acquired the broader line of products manufactured by the Rome Cable Company has any advantage in securing your business?

[fol. 1373] A. They have not gained any advantage by

acquiring these additional products.

Q. Is it your feeling or opinion that Alcoa's acquisition of Rome Cable has injured you in any way as a purchaser of wire and cable products for overhead lines?

A. No, sir, because we feel that there was plenty of competition from all the companies that are considered suppliers of these are due to

pliers of these products.

Mr. Adler: No further questions.

Cross-examination.

# By Mr. Mahaffie:

Q. Mr. Isenhart, has your company at any time bought from the Southern Electrical Corporation?

A. Not to my knowledge, sir.

Q. Now, you listed as among potential suppliers from whom you did not solicit bids Reynolds, General Cable and Olin. Did you regard them as unreliable?

A. No, sir, I do not regard them as unreliable, because we

have made purchases from them.

Q. You have made purchases from them?

A. Yes.

[fol. 1374] Q. But you are not today soliciting bids from them; is that it?

A. Not always.

Q. Well, how does this bidding work, Mr. Isenhart? Do you send out an inquiry for bids on a particular job?

A. You solicit your suppliers when you want to receive quotations.

Q. Do you have a printed bidding list?

A. Yes, sir.

Q. A constant list for all jobs or does it vary with the job, does it vary from job to job?

A. Not necessarily, sir.

Q. Well, then, what you do, whenever you have a job coming up you send out inquiries, I take it, to each company that you want to have bid on that job?

A. That's right.

Q. And is it the purport of your testimony on direct that at least as of today you sent these inquiries out—I am sorry, we are talking about prior to 1959—that you sent these inquiries out to Anaconda, Alcoa, Central, Rome and Essex?

A. That's right, sir.

[fol. 1375] Q. Now let's take the year 1959, would this have been true on every job that was up for hidding during the year 1958?

A. No, sir.

Q. Well, did you send any inquiries to any companies other than Anaconda, Alcoa, Central, Rome and Essex in 1958?

A. I don't remember, sir.

Q. But you might have?

A. I might have.

Q. Well, who are you sending inquiries to now? Who on these large aluminum jobs are you soliciting business from today?

A. Aluminum Company of America, Anaconda are the

largest in the field.

Q. Well, anyone else?

A. They are suppliers.

Q. Are these the only two companies from whom you solicit bids today?

A. On what products, sir?

Q. Well, the products that you were talking about on direct examination, Mr. Isenhart, and I believe that was, and correct me if I am wrong, I believe you were talking about orders of aluminum cable; weren't you?

[fol. 1376] A. Yes.

Q. And you listed Anaconda, Alcoa, Central and Essex

as the companies you,—they were the companies you mentioned with respect to business prior to April, 1959. Now, on similar orders today do you limit yourself to Anaconda and Alcoa?

A. There are other central cable facilities.

[fol. 1377] Q. Anyone else?

A. Occasionally could be the other suppliers that were mentioned.

Q. Well, you solicit bids from substantially everyone, then, don't you?

A. No. sir.

- Q. Well, who among your suppliers do you not selicit bids from? That doesn't make much sense, does it? What I am trying to get at, Mr. Iisenhardt—I gathered on direct examination, you said you had a limited group of five suppliers in 1958. Now, I want to know if that group is the same today, or if it is bigger or smaller. What has happened to it?
  - A. It's the same today.
- Q. But you do solicit bids from other companies on oc-
- A. Depending upon how much interested they are in our business. How much they solicit us.
  - Q. So if I was a manufacturer of this product, and I solicited you, you would allow me to bid on it?

A. Yes, sir.

Q. Mr. Isenhart, you stated that in so far as you knew, your views on this supply situation were shared by other [fol. 1378] utilities. How do you know this?

A. By conversations with men in the same position that

I am.

Q. Strictly by conversations?

A. That's right,

Q. Did you buy heavy electrical equipment for Dayton or have you bought heavy electrical equipment?

Mr. Adler: Would you specify what you mean by "heavy electrical"?

Mr. Mahaffie: Heavy transformers.

The Court: Transformers?

Mr. Mahaffie: I am talking about the general field of heavy electrical equipment other than cable.

Mr. Adler: I object to that, Your Honor. It doesn't seem to have any relevance.

The Court: Overruled. I am not acquainted with it too

well.

(To Mr. Mahaffie) You mean the transformers, the machinery part of the business?

Mr. Mahaffie: Yes, sir.

The Court: All right. The question is, I think-

Mr. Mahaffie: I'll rephrase it, sir.

### [fol. 1379] By Mr. Mahaffie:

Q. Do you have responsibility for the purchase of heavy electrical equipment for the system?

A. Is this for distribution sizes up to a certain KVA, or

over a certain KVA?

Q. Well, I'm thinking about both. Let's take them one at a time. The larger sizes—do you have a responsibility for them?

A. I have the responsibility with the cooperation and recommendation of our engineering division.

Q. That's true with respect to wire and cable, also, isn't

itf

A. Not necessarily. .

Q. What about the smaller sizes of transformers?

A. I have responsibility for the purchase of smaller transformers:

Q. About how many suppliers do you have in the field of large transformers?

A. It depends on the size, sir, and the type, and the manufacturers that might be able to produce the equipment needed.

Q. Would you say your supply situation generally is the same or different than your supply situation with wire and cable—in terms of numbers of suppliers?

[fol. 1380] A. Well, on the large transformers, the field is rather limited.

Q. Do you regard the number of suppliers of the large transformers as constituting enough suppliers for your purpose, or would you rather have more?

A. It is competitive.

Q. So you think there are enough?

A. Yes.

Q. I have no further questions.

Mr. Adler: No questions.

The Court: All right, Mr. Isenhart.

GLENN KOGER, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Mr. Bergson: Your Honor, before examining Mr. Koger, I would like to hand to you a recent decision from the United States District Court, Southern District of California, which will have some bearing on Mr. Koger's testimony. The Government has a copy of this decision. One of the areas that I want to discuss with Mr. Koger is the so-called eleven Western States Market. This is an opinion that [fol. 1381] came down on the 29th of January, dealing with a four Western States market, and the factors that should be considered in connection with the determination of that market,

Direct examination.

# By Mr. Bergson:

- Q. Mr. Koger, will you please state your name and address.
  - A. Glenn Koger, Barneveld, New York, R.D. 2.

Q. By what company are you employed?

A. Rome Cable Corporation, Division of Alcoa.

Q. How long have you been employed by Rome Cable Corporation, Division of Alcoa, or its predecessor company, the Rome Cable Corporation.

A. Since 1954.

Q. What positions have you held in the Rome Cable organization?

A. Well, mainly, my assignment has been as manager of the West Coast Plant located at Torrance, California, where they manufacture conduit and industrial tubing, steel tubing; and also vice-president of the company.

Q. Now, when did you cease to be manager of the Tor-

rance Plant, and come to Rome?

[fol. 1382] A. In August, 1960.

Q. And what is your position today with the Rome Cable Corporation?

A. Vice-President and Director of Manufacturing at the

Rome Plant.

Q. Director of manufacturing?

A. Yes.

Q. What does that encompass?

A. How much does that encompass?

Q. What area do your duties encompass?

A. Encompass manufacturing operations at our home plant, and also home office direction of the Torrance Plant and the other small operation in the Los Angeles area, making cable assemblies.

Q. Now, when you were stationed at Torrance—and I think you said that Torrance was engaged primarily in the production of steel conduit—did you give consideration to

the manufacture of aluminum conduit?

A. Yes, we did.

Q. When was that?

A. Our studies stemmed from activity being shown by our competition in aluminum conduit. We, being a manufacturer of steel conduit, could see the competitive situation [fol. 1383] developing, and our natural interest was to try to find a possible way we might also be able to produce aluminum conduit.

We started this study actively, I would say in the fall of 1958.

Q. Now, what steps did you take in connection with your

study of aluminum conduit?

A. We looked into various possibilities as a means of producing material. We had given some thought to the possibility of producing it in a manner similar to the way we were making, basically, our steel pipe, where we buy sheet, slit, weld, make it into pipe. We never did go very deeply into that, not even to the extent of making any careful financial studies. We learned of the possibility—

Q. (Interrupting) Why didn't you pursue that?

A. Partially because it didn't look as though it was going to be an economic process on the surface. We had to buy sheet, and the cost of sheet on the market, the price of sheet, didn't leave the necessary margin beyond—didn't appear to be economic on the surface of it. We then looked for a source of supply of pipe, and we learned of some activity being conducted by Hunter Engineering, which is in the [fol. 1384] same area of Los Angeles, and we entered into some superficial studies with Hunter Engineering to see if we could obtain pipe from them. They gave us considerable encouragement in the fall and early winter of-in November or so of 1958-and we finally learned from them a rough estimate of what their costs might be. We then took the difference between what their cost was, and what we thought we would then have to add to it as a manufacturing cost, to determine what the total profit might have be to be split between us. In other words, what margin there was for us to operate. At the current prices then in existence on aluminum conduit, we thought there was a possibility of being able to eke out the necessary margin. It developed that they would have to make, for them, a substantial investment. It also developed they were in some negotiations and such with, I think, their parent company at the time, or at least a substantial owner in the company, we were informed, being, I believe, Olin Mathieson, and they indicated to us that-well, their problems would have to be solved or reconciled before they could go further with this operation, that time, I believe, being the time in early December-the exact [fol. 1385] date I could not attest to. But we followed them up by phone conversations and found they were not being very aggressive in their approach, and it was becoming evident by the end of the year that this was probably a dead horse.

Q. So you abandoned your approach to get into the aluminum conduit business using Hunter Engineering as a source of your aluminum pipe?

A. That would be true.

Q. Now, did the Torrance Plant of Rome have any equipment for extruding aluminum pipe of its own?

A. We did not.

Q. Did you give any consideration to acquiring an extrusion press of your own?

A. Not seriously. It was evident that our volume would not justify it without even going into a study on it.

Q. So that by the end of 1958, did you have any plans

under consideration for going into the aluminum conduit, business?

A. The correct answer would be no. There were no plans. We were interested in trying to find some solution, but we had none.

[fol. 1386] Q. Well, I show you Government's Exhibit 323 and ask you if you can tell us what that is.

A. This is headed "Cost Estimates Finishing 10-foot Pieces of Aluminum Conduit."

Q. Did this have any bearing on your discussions with

Hunter Engineering?

A. I don't see the context of this. I don't recall the context of it. It appears to be—I am reasonably sure it's—I see in here quoted "Estimated pipe costs, 35 cents a pound," which was their estimated cost of manufacturing, without any margin of profit for them.

Q. That would not have been the cost of the pipe to you?

A. No, they would have had to have some margin.

Q. Do you know whether or not they had made any extensive study to ascertain exactly what the cost of the pipe to them would have been?

A. I would have no real way of knowing. These figures were given to us without supporting data.

Q. Are those figures in your handwriting?

A. No.

Q. But the 35 cents referred to is the cost of the pipe to Hunter Engineering, and not the cost of the pipe to Rome [fol. 1387] Cable Torrance Plant?

A: Hunter gave this as their estimated cost of manufacturing, recognizing there would have to be a margin for them on top of that.

Mr. Melchior: Would you identify the 35-cent figure you are referring to?

The Witness: On this second sheet, on line 19, "Estimated pipe cost per pound 35 cents."

Mr. Melchior: Thank you.

Q. Now, is this an accurate statement of fact, Mr. Koger? Rome was at the time of the acquisition very close to being an actual competitor of Alcoa in the aluminum field.

Mr. Melchior: I think we should object to the question as leading.

Mr. Bergson: I don't see how I can be leading the witness. I asked him whether this was an accurate statement of fact.

The Court: I don't think it is leading, particularly.

Mr. Bergson: I am reading from the Government's brief,

your Honor.

The Court: Of course, the Government's brief is a pre[fol. 1388] trial brief, and I assume it is based on a little
expectation; some hope. I think I will sustain it in that
form. I think he has already said that as far as he knew,
Rome, at least the Torrance Plant of Rome, did not have
any plans of entering the conduit business.

Q. Do you know of any plans by Rome Cable prior to the acquisition of entering into the aluminum conduit business

anywhere?

A. We had no plans for entering. We were seeking a means by which we might be able to enter the field. Having in mind there was a possibility that aluminum conduit might become a substantial item, and we, being interested in the conduit field, we were naturally looking for a means of protecting our interests?

The Court: Up to that date you hadn't found anything satisfactory to you?

The Witness: That is it exactly.

The Court: What you do as to hope for the future.

The Witness: Naturally, our hope for the future at the time of the acquisition, was much in the scrap pile.

## [fol. 1389] By Mr. Bergson:

Q. It was in the scrap pile?

A. Yes. In other words, we had no particular venture in front of us at the moment. We saw some opportunities. Some of our competitors had started to move in too, and we probably looked at them, that is, where they bought from any other suppliers.

Q. Let me ask you, what did some of your competitors do?

A. We were informed that some of our competitors had made arrangements with some other producers of conduit to obtain pipe, to obtain conduit and resell it to their customers, primarily as a courtesy item.

Q. As a courtesy item?

A. Yes.

And therefore you would have been primarily a distributor of conduit rather than a manufacturer of conduit.

A. We entered into very similar program with plastic

pipe, which is not an unusual practice in our industry.

Q. Now, Mr. Koger, where did—all of Rome's conduit manufacture was centered in the Torrance Plant; was it [fol. 1390] not?

A. It was.

Q. Now, where did Rome sell this conduit?

A. When you talk conduit it can be interpreted as an over-all term meaning E.M.T. and rigid. E.M.T. was sold nationally; rigid conduit was sold in the Western States, and if we take a certain time it was sold in different areas at different times.

Q. Will you tell us what areas they were sold in?

A. We generally started distributing it essentially in California, Oregon, Washington, Utah, Nevada. I think there were six originally.

Q. And the reason for limiting your sales to those areas

was what?

A. It was a freight problem. The East Coast manufacfacturers which are your basic competition, they can deliver—

Q. Let's just-

A. Basically it is freight problem. You were dealing with rather heavy material and as soon as you start shipping it from your plant you start encountering a freight problem, and on rigid conduit it is sold f.o.b. plant plus freight. Your cost to the customer includes freight.

Q. Now, did there come a time when you were able to [fol. 1391] expand the area in which Rome sold its steel

conduit?

A. That's right. We found that—we felt that we had reached the point in our economics where we could expand our operations, and then I think we went to 14 states, sold in 14 states. We expanded into Colorado, Texas, and I think Wyoming. I would have to look it up before I could tell you. It was about 14 states:

Q. Why were you able to reach those markets at that time when you formerly had not been able to reach those markets?

A. It is fundamentally a question of your economics of manufacture. In our manufacturing operation volume is extremely important to us in determining our unit costs. You have a certain investment and you can produce a considerable more volume for reasonable increase in cost. Therefore, in order to extend, in order to increase our volume, we expanded our sales area and this was brought about -well, keep in mind originally we had difficulty making rigid conduit at a profit. And as we improved our methods we reached the point where we felt that we could then ship [fol. 1392] into greater areas. And keep in mind we are absorbing freight as we ship out. In other words, we met the competition. The competition set the price for us. So we had to sell in these individual areas at the price of, or the cost of pipe plus freight out to these points. And then absorbing freight as soon as we left our plant, we started, we had to start absorbing freight. When we left the Los Angeles area or Torrance Plant, we would meet competition.

Q. Now, your plant was located in Torrance, California?

A. Right.

Q. Who were your competitors?

A. Our competitors, as far as the rigid conduit is concerned, is practically the entire industry. The East Coast manufacturers were in excellent position to distribute on the West Coast.

Q. Were there any other manufacturers of conduit who

had their factories west of the Mississippi?

A. There was a manufacturer, of a large concern, that had a conduit plant quite comparable to ours right in Torrance.

Q. What happened to that plant?

A. They ceased operations out there in early 1957 and [fol. 1393] abandoned the area and went back East, to produce back east.

Q. When they went back East did they stop selling in the West?

A. They did not. They continued to distribute on the West Coast.

Q. Now, your competition you stated in the areas where you sold, which were west of the Mississippi, came solely after 1957 from competitors whose plants were located east of the Mississippi?

A. That is correct.

Q. Now, will you tell me and tell the Court how it was possible for these plants east of the Mississippi to compete with you, where your plant was located in the area in which

the product was being sold?

A. This is a basic problem that every manufacturer has on the West Coast. Basically our steel from which our raw materials are made, the price is established by East Coast prices plus freight to the West Coast. As soon as we started manufacturing out there and started shipping back East, we encounter higher freight rates for the same material than the East shipping West. In other words, there is a [fol. 1394] substantially higher rate for the same distance from Los Angeles back East than there is from the East out West. Freight rates are higher. Also East Coast manufacturers enjoy other low freight rates by water, delivered any place on the West Coast, at the same price. It costs them no more to deliver pipe to Seattle than it does to deliver to Los Angeles.

Q. When you say pipe, you mean conduit?

A. Well, yes, conduit, steel pipe conduit, or E.M.T. Therefore, in order to compete with the East Coast manufacturer we have to meet their prices up and down the coast. Therefore, we have to, and we refer to it as absorbing the difference in price and the freight rate.

Q. Is it my understanding from your testimony that you are at a freight disadvantage with East Coast producers selling in the West even though your plant is located in the

West and their plants are located in the East?

A. That is true.

- Q. Now, you mentioned the fact that an East Coast manufacturer could ship to Seattle for the same price he could ship to Los Angeles. Is the East Coast manufacturer's [fol. 1395] price laid down at Los Angeles, the same as it is at Seattle!
  - A. Delivered to the customer, you mean?

Q. No. delivered to his warehouse.

A. To the dock. Delivered to his warehouse:

Q. Warehouse.

A. Essentially the same within pennies. The difference in freight rate from dock to warehouse, but essentially it is the same.

Q. Now, when you compete with an East Coast manufacturer in Seattle do you have to meet the East Coast manufacturer's price in Seattle?

A. Right.

Q. Now, how do you do that?

A. We arrive at what our competitor's price would be, based on his published sheets at his mill, and then add the cost of freight to the customer from his mill and that becomes our competition. It is a standard practice in this industry.

Q. Does this necessitate your absorbing part or all of the

freight from Los Angeles to Seattle?

A. That is correct, because our price is established in Los Angeles to meet East Coast competition in Los Angeles. [fol. 1396] Q. Now, in Los Angeles, which is where your plant is located, do you have any price advantage over the East Coast manufacturer?

A. What consists of a price advantage on that? The answer would be no, I think would be the the proper term.

Q. Let me put it this way, is your price plus delivery charges, comparable or better than the East Coast manufacturer's price delivery charges?

A. The answer is we sell at the same price that the East Coast does delivered there in Los Angeles, which means

there is no difference.

Q. And again I ask you does your plant by virtue of its location in Los Angeles have any price advantage over the East Coast plant, cost advantage, over the East Coast plant which ships from the east coast or the East to Los Angeles?

A. No. We are at a disadvantage, because of the differ-

ence in the raw material costs.

Q. You pay higher raw material costs?

A. That's right.

Q. And your higher raw material costs are due to the fact that you are in the West and they are in the East?

A. That's right.

[fol. 1397] Q. Now, who are your suppliers of raw material?

A. Our basic raw material is supplied by the two western mills plus Bethlehem Steel from their eastern mill.

Q. And do you pay the western mills the same price that you pay Bethlehem for your raw material?

A. That's right. They compete with each other and generally sell—we meet the sales competition, whichever one is lowest. Sometimes it is Bethlehem, sometimes it is the West Coast.

The Court: Take a recess.

The Clerk: Court is in recess.

(At this point a recess was taken after which the trial was resumed.)

[fol. 1398] Q. Mr. Koger, while you were at Torrance were certain studies made of Rome's sales of conduit in the eleven western state area?

A. There were comparison studies made, and the eleven western states were used only because the data that was available for comparison were the eleven western states. We sold in that area either less or more, but the data available was for the eleven western states.

Q. Are there certain trade publications that talk about the eleven western state area?

A. That's right.

Q. Now, are steel and aluminum conduit used for the same purposes?

A. Yes, quite interchangeably in many applications.

Q. Is there price competition between steel and aluminum conduit?

A. Yes, very critical. Very strong competition between the two.

Q. Does the price of steel conduit have any effect on the price of aluminum conduit?

A. Well, if I am to judge from the way our steel prices were affected by the change in the prices by the aluminum [fol. 1399] people, I would say it certainly did.

Q. Now, just a couple more questions, Mr. Koger. Prior to your employment by the Rome Cable Corporation for whom did you work?

A. Walker Brothers at Conshohocken, Pennsylvania.

Q. What business were they engaged in?

A. The manufacture of conduit, under floor duct and insulated wires.

Q. Did they make insulated wires with aluminum and copper as the conductor metal?

- A. We did. We were in copper for many years, and then as aluminum began to come into the picture we bid and accepted orders for aluminum conductors.
- Q. And was the aluminum conductor drawn, stranded and insulated on the same machinery that the copper conductors were drawn, stranded and insulated on?
- A. Yes. Used different drawing solution and machine, but the same dies, same machine, same stranding facilities.
- Q. And you drew copper on some occasions and aluminum [fol. 1400] on other occasions?
  - A. Yes.
  - .Q. No further questions. Your witness.

Cross-examination.

## By Mr. Melchior:

- Q. Mr. Koger, in your direct testimony you spoke at length of problems involving freight and cost of shipping conduit. Were your remarks on that subject related solely to steel conduit, or did they apply to both steel and aluminum?
- A. Primarily to steel. The price of aluminum being a little different from the pricing of steel.
- Q. Yes. There is a difference in pricing.

  [fol. 1401] The Witness: A freight problem exists as far as the manufacturer is concerned.

Q. I don't know what you mean by that.

- A. Well, you have the delivered price in the cost of aluminum so that you have your freight that has to be taken into consideration as far as your manufacturing cost.
- Q. Do you have a delivered price in the cost of steel?
- A. You meet competition in the cost of steel. You arrive at the price you will charge the customer based on your competition and the cost of delivery of pipe conduit from the source of manufacture to the customer.
- Q. There is a difference in pricing steel conduit and aluminum conduit?
  - A. Yes, that's right.
- Q. Now, I would like to go over your direct testimony with respect to where Rome sold its conduit prior to the

merger. Also I believe you testified that Rome sold only steel conduit prior to the merger.

A. That is correct.

[fol. 1402] Q. That is correct. And I believe you stated that originally Rome sold its steel conduit, I believe you said, in a four or five-state area.

A. I think I said six.

Q. Six?

A. I believe I named them, but I didn't name six.

Q. You named California, Oregon, Utah, Washington and Nevada.

A. And Arizona. I checked on it.

Q. And then you stated at a later date you began shipping into what you described as a fourteen state area, but you couldn't recall the names of all the states.

A. I have since checked them. I have all the names.

Q. Are those fourteen states generally the fourteen states, the fourteen westernmost states?

A. The states involved are Wyoming, Montana, New Mexico, Texas, Colorado, Western Louisiana and North and South Dakota. So you see we are reaching across the southern part. It was a question of the economics of transportation.

Q. Yes. Now, I believe you stated that as you increased [fol. 1403] your volume you could extend your sales area.

A. That's right.

Q. Now, what did you mean by that?

A. When a product that has a rather high investment and some manufacturing costs—well, I will put it this way, put it a little different way. In our product line to produce any conduit you have to have certain investment, certain facilities, certain operation. There are furnaces involved; there is zinc pots, things that have high standby and operating costs. Therefore, if you could use these facilities for long hours, keep them running, your unit costs are not so high.

Q. I see. And if you can produce more units-

A. That's right.

Q. —and keep your unit cost lower you can absorb more freight and ship a little farther?

A. That's right.

Q. As a matter of fact, some of your competitors ship atquite great distances; don't they?

A. That is exactly right.

Q. Now, you also spoke of an eleven-state area on direct testimony. What was this eleven-state area, how did it [fol. 1404] differ from the fourteen-state area?

A. Essentially the eleven states are those states west of the Continental Divide. It is rather common in the western part of the country to refer to the eleven western states. Many trade magazines and data collection agencies have a tendency to use eleven western states as a study area.

Q. This is a practice in the trade in that area?

A. It is not our trade primarily, but it is a practice quite common up and down the western coast for any of the western operations that have east coast manufacturers. It is established essentially for the east coast manufacturers. It is our survey by shipping by water from the east coast you reach the line of maximum freight rate essentially down the Continental Divide. There is variations from that, but it is essentially the Continental Divide.

Q. At some time during the period that you were extending your market from the six-state area to the fourteenstate area, did you pass through the stage where there

[fol. 1405] might have been an eleven-state area?

A. Actually the records don't indicate there were. When we made our study to determine how much further we would reach, we jumped from six to fourteen. We took in eight additional states, the second group I mentioned, which were the results of the second study we made on which we based our decision to go into that area.

Q. But you did refer to an eleven-state area in a number

of your internal memoranda.

A. Yes, we did, and one of the reasons was we were always trying to find a means of measuring our volume against competition. That is always a problem that you have.

Q. Yes.

A. And we could only get national figures. The figures we obtained for the west coast operations were very broad and while they were overall building figures which we have always tried to liken our volume to, frankly we would always have to admit they were very much in question too.

- Q. You found it difficult to measure your position in the fourteen-state area because of the absence of this type of [fol. 1406] information?
  - A. Yes.
    - Q. And the six-state area too?
    - A. That is exactly right.
- Q. But the eleven-state area seemed to be the area where you could secure statistics and thereby measure your approximate position in the area?

A. We attempted to do that.

[fol. 1407] Q. Yes. Do you-

- A. We could measure the amount of sales we had in the eleven states. Give some comparison. If there was any relationship between them. We always had a lot of argument between the home office and us out there as to how realistic our figures were.
  - Q. Yes, but you did use an eleven-state area nevertheless.
- A. Because that was the only information available to us.
- Q. Exactly. Did you find it difficult to make a profit in steel conduit prior to the merger with Alcoa?
- A. We found it difficult to make a profit in it from the beginning. In rigid conduit.
- Q. Yes, in rigid conduit. I believe you described rigid conduit as a courtesy item.

A. No.

Q. Didn't you use that term?

A. No, I commented that we found some of our competition had taken on aluminum conduit by purchasing it from other suppliers and reselling it as a courtesy item to their customers. They were basically in the steel business, but [fol. 1408] they were buying and reselling aluminum.

Q. Would you tell the Court what your understanding of

the term "courtesy item" is?

A. Well, you have certain customers that have—see, this trade generally has a tendency to sell to jobbers and to develop a certain number of jobbers that handle your product line, and if you could supply them, when they have occasional need for another product, if you could supply them with it, why you felt you would be doing them a good turn, and help yourself if possible.

- Q. Do you consider this an inducement to purchase on the part of your customers from you?
- A. Oh, it is questionable how valuable it is from that standpoint. Another object being that if by any chance the trade should go that way, if the volume should go that way, you would have an in; you would have your foot in the door; where otherwise you wouldn't have your foot in the door. We have taken that same approach on the plastic conduit.
  - Q. Is this a courtesy item?
- A. Essentially. It is not a profitable item, it is a break [fol. 1409] even item. If the volume reached a point where it would justify our entering it, we would have a foot in the door as far as sales were concerned.
- Q. I believe on direct examination you discussed at some length Rome's early interest in aluminum conduit. Would you state to me in a word what Rome's—the first time to your knowledge that Rome became interested in aluminum conduit, what its interest in going into this field was.
- A. Well, keep in mind any of us interested in the conduit. business were aware of any potential items, and aluminum conduit has been available for many years, and it was not (a) particular interest in the industry as long as the prices were considerably above the going prices of the steel conduit. But as the economics of aluminum conduit became such that the pricing of that became more comparable to steel, those of us in the steel industry have been very much aware of the possibility that aluminum might enter the field. Therefore, I think it was natural, as a good businessman, from a good business standpoint, for us to make a study of aluminum at any time it has seemed to justify the effort, and as in [fol. 1410] 1958 Kaiser had entered the field very aggressively and were promoting the sale of aluminum conduit. And then we made studies, primarily in the fall of 1958, to try to see whether we had any opportunity to enter this field.
- Q. You considered adding it as an additional item to steel conduit?
- A. I think our thought was more from the standpoint that if at any time the aluminum conduit should reach the point

where it could be sold for less than steel, it might become the predominant item, and we, being interested in the conduit field, were interested in getting in there.

Q. You wanted to get in on the ground floor.

A. That would be essentially true, although I think, as one of the witnesses stated the other day, we, not being in the extrusion business, we were very much at a handicap because it all stemmed from the extrusion of aluminum pipe and we were not in that field.

Q. Why did you consider that a handicap?

A. Because that is an essential piece of equipment by the methods by which aluminum pipe is made today. That [fol. 1411] was an essential piece of equipment in the operation, and brought you closer to the base metal. You work then from billet or ingot.

Q. Extrusion press—is that what you are referring to?

A, Yes. Not only that we could see our real competition was from those people who did have extrusion presses, of which there is many of them around the country.

Q. Who would that have been in this area?

A. Well, of course, Channel Master had been one of the leading ones.

Q. In what year was this?

A. That would have been in 1960, they came into it, but—

Q. We are talking about 1958.

A. Go back to Hazelwood, was one of the originals that promoted it before Kaiser, and Kaiser came into the picture. But I was using Channel Master as an example of the type of people that got into that business.

Q. We are talking about the year 1958 now. Can you re-

call who the companies in the field were?

[fol. 1412] A. Hazelwood being one of the main ones, and Kaiser were the two main companies at that time.

Q. Was Alcoa promoting it at that time?

A. I think, yes. In the fall of 1958 Alcoa and Reynolds were also promoting it. But up until the time Kaiser went into the field, we hadn't heard much of Alcoa or Reynolds, either one.

Q. Are hey the only companies you can think of that were extruding aluminum pipe in those days, in 1958?

Mr. Bergson: Extruding aluminum pipe for conduit purposes.

Q. Extruding aluminum pipe for conduit purposes.

A. Making conduit. Offering conduit for sale. I think Hazelwood, Kaiser, Alcoa, and Reynolds were essentially the companies that were. There was any number that all they had to do was thread it and put couplings on it, get the Underwriters' approval and they would be in business, as has happened.

·Q. You felt in order to go into this business properly you

would have to have an extrusion press?

A. That's right, or have access to those facilities.

[fol. 1413] Q. From your knowledge of extrusion presses, do you have any idea what the cost of an extrusion press is?

A. I haven't the least idea. It is a considerable investment though,

Q. Now, you said during the fall of 1958 you were giving consideration to going into the field of aluminum conduit; you were surveying competitors, what you would need and so forth, and you had some negotiations I believe with Hunter Engineering, who was also giving some consideration to working out an arrangement with you; is that correct?

A. That's right.

Q. When did Rome Cable formally abandon plans to go into the field of aluminum conduit, if they did?

A. Well, I would say that this thing more or less vanishedfrom lack of interest being shown by Hunter around the first of the year. Right in late December, 1st of January, of 1958-59.

Q. You say that's the time that Rome abandoned their plan?

[fol. 1414] A. That's right.

Q. What steps were taken? Who gave an indication of this?

A. Hunter Engineering indicated they were showing very little interest in the program.

TQ. Oh. This is with respect to the arrangement with Hunter Engineering?

A. That's right.

Q. I am thinking of a broader base. Did you still have interest in the aluminum conduit field, even though Hunter. Engineering negotiations had broken down? Did you still have an interest?

A. Any of the steel manufacturers were continuing to look at aluminum, to see whether they could economically enter the field or not.

Q. Were you still interested in it then?

A. Interested in watching it all the time, to see what its growth was going to be; if its growth became substantial, naturally we were interested in entering the aluminum conduit business.

· Q. In other words, your interest was maintained up until the time of the Alcoa-Rome merger, wasn't it?

A. I suppose any of our interests, no more than any other > [fol. 1415] competitor was interested in getting into the aluminum.

Q. I didn't hear your answer.

A. To the extent that any of our competitors were interested.

Q? You were still interested?

A. That's right. That is, assuming that the aluminum conduit would become economical.

Q. Oh, yes. If there were good business reasons, you were still—

A. We felt if it got below steel in price, it probably would become profitable. I think it is worthy of note that the steel people were also finding ways of making theirs lower too. So were we. To stay below the price. That's an important factor in the overall study, looking both ways.

Q. You say the steel people were interested in making theirs over?

A. Making theirs less expensive. In other words, reducing their cost, to stay below the cost of aluminum. So it was economical, or as economical to use steel as aluminum.

Q. From your knowledge of the conduit industry, would you say aluminum has made inroads into the steel conduit [fol. 1416] market over the last several years?

A. Oh, I don't think there is any question about it. It has entered the field.

Q. Are there any reasons for this?

A. Well, economics. It has been sold at a less price than steel.

Q. Is that all?

A. Well, there is various schools of thought. There are those that promote aluminum, that feel aluminum has some very definite advantages over steel. The people promoting steel will point out the advantages of steel over aluminum. And it leaves it for the customers to decide which one they want. There are certain places we think aluminum is better than steel and certain places steel is better than aluminum.

Q. Which do you promote, in your present position?

A. We try to sell the customer what we think is best for

him. In the position now of offering both.

Q. In other words, in some cases for a particular customer aluminum would be better than steel, and in others [fol. 1417] steel would be better than aluminum, is that correct?

A. Exactly right.

Q. I believe you stated that prior to your becoming manager of the Torrence plant, or prior to your employment with Rome Cable, you were employed by Walker Brothers in Pennsylvania.

A. That's right.

Q. What business were they engaged in?

A. Manufacture of insulated electric wires and conduit manufacture, and under floor duct.

[fol. 1418] Q. Now, in your present position are you generally familiar with companies engaged in the manufacture and sale of conduit?

A. Reasonably so.

Q. Do you know whether Walker Brothers is still engaged in the manufacture and sale of conduit?

A. Yes.

Q. Are they?

A. Yes.

Q. What type of conduit?

A. Up until the last few months, anyway. Making rigid steel conduit and aluminum conduit—I am sorry—rigid steel conduit and E.M.T. Steel E.M.T.

Q. Do they make aluminum conduit?

A. No. I think they sell it. I think they have an arrangement where they buy it and sell it.

Q. Purchase it for re-sale?

A. Yes, similar to some other manufacturers in that same business.

Q. There are other manufacturers who produce aluminum conduit for re-sale?

A. Yes.

Q. Do you know how many there are that do that?

A. No.

[fol. 1419] Q. Can you identify any that do that?

A. Well, Walker Brothers is one. Triangle being another. They are the ones, I believe, I am acquainted with.

Q. Any others?

A. General Electric, and I have heard of others, but those are the ones I have direct knowledge of.

Q. Those are all the names that you can recall?

A. Those are all that I know of at the moment.

Mr. Melchior: No further questions.

Mr. Bergson: No redirect, your Honor.

The Court: All right.

(Witness excused.)

The Court: Do you want to go for a few minutes longer? Mr. Bergson: Mr. Rolston.

· GLENN ROLSTON, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Bergson:

Q. Mr. Rolston, will you please state your name and address for the record? [fol. 1420] A. Glenn Rolston, Golf Course Road, Rome, New York.

Q. By whom are you employed?

A. Rome Cable Division of Alcoa.

Q. Were you also employed by the predecessor company of the Rome Cable Division of Alcoa?

A. Yes, I was.

Q. For how long a time have you been employed by the Rome Cable Corporation and its successor?

A. From October, 1936.

Q. Prior to your employment by Rome Cable Corporation did you have any experience in the wire and cable industry?

A. Yes, I did.

Q. Would you please state for the record what that was,

beginning at the earliest date and moving on up?

A. I went to work for the Rome Wire Division of General Cable Corporation in 1929, in the Philadelphia Sales District, and from 1930 until I left in the fall of '36 I was employed by General Cable at Rome, New York and at their New York headquarters.

Q. In what capacity?

A. The capacity that I was engaged in, for about four years at the Rome Plant of General Cable, I was in charge of cable engineering and inspection and standards of [fol. 1421] wire product in the plant. After I moved to New York I was first in charge of the cable engineering department and then later merchandise manager of the company.

Q. Now, what were your duties at Rome Cable Corpora-

tion from the beginning?

A. When I was first employed I was chief engineer and was responsible for the preparation of all standards and specifications, operating procedures. And the inspection department reported to my office, also. In addition I handled field sales contract on sales engineering problems.

Q. Now, what is your present position?

A. My present position is director of marketing of the Rome Cable Division.

Q. And how long have you had that position?

A. In the division since the merger in April, 1959.

Q. And what was your position immediately prior to, April, 1959.

A. I was vice-president and manager of marketing of Rome Cable Corporation.

Q. And for how long were you vice-president in charge of marketing for Rome Cable?

A. Since 1945,

[fo]. 1422] Q. Have you served on any governmental

bodies during this period?

A: Well, during World War II I was on several of the what they call technical advisory committees of various branches of the service and specialized in problems.

Q. Involving the wire and cable industry?

A. All involved in wire and cable, yes, and at the time of Korea, 1951, I served in Washington as Chief of the Wire Mill Branch of the Copper Division, which was then NBA, and then BDSA, for a period of six months.

Q. What is BDSA?

A. BDSA is Business Defense Service Administration.

Q. What are the functions of BDSA?

A. As it is presently set up, I believe it constitutes a service, it is part, first of all, the Department of Commerce, and it serves—

. (Discussion was held off the record which the reporter was directed not to take.)

Q. Speak up a little louder at least while the plow is out here.

A. Among other things, I can't say I could answer all [fol. 1423] of its functions because it has been somewhat reorganized of late, but among other things, it is an organization of the Department whereby various types, not of all industries, but copper, aluminum and steel report volume of shipments; act as an agency for the collection of data in these, let's call them, raw materials sales and shipments. They provide information to various segments of the industry on, let's call them, quotations, business opportunities. They send out leaflets and information of that type. They act as an agency where you may arrange meetings with other departments of the Government on an industry basis.

Q. You said you were in the copper division of BDSA.

What was the function of the copper division?

'A. The copper division was divided into three parts. One was the supply situation with copper producers. Then they had a wire mill branch of the copper division which was involved in wire mills. They had a brass mill branch which was involved in the brass mill, and I neglected to mention a fourth one, which was foundries and casting.

Q. The purpose of the division, as I gather from what

you said, was to ascertain the supply of copper and to see [fol. 1424] where the supply of copper went?

A. That is correct.

Q. And I suppose that the aluminum division performed the same function with respect to aluminum as the copper performed with respect to copper?

A. Yes, they did.

The Court: It is time to quit, anyway. Recess until two o'clock.

(Whereupon, at 12:40 p.m. o'clock an adjournment was taken until two o'clock p<sub>3</sub>m. of the same day.)

[fol. 1425] Mr. Adler: Your Honor, if it is agreeable to, you, we would like to interrupt the testimony of this witness and put on a utility witness.

The Court: Yes, it is all right.

LELAND D. McCormac, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

## Direct examination

# By Mr. Adler:

Q. Would you state your full name, please?

A. Leland D. McCormac.

Q. What is your position?

A. Vice president in charge of purchasing, Niagara-Mohawk Power Corporation.

Q. How long have you held that position?

A. Since January 1, 1953.

Q. And how long have you been in the public utility business?

A. Well, with Niagara-Mohawk or its predecessors since 1926.

- Q. Have you read the testimony given by Mr. Pratt of the Niagara-Mohawk Company earlier in this proceeding? [fol. 1426] A.I have.
- Q. Are you in agreement with his description of the size and extent of the Niagara-Mohawk system?

A. Yes.

Q. In your position as vice president in charge of purchases have you been responsible for the purchases for Niagara-Mohawk of the products shown on that board over there, a photographic copy of which has been introduced in evidence as Defendant's Exhibit AR-201

A. I have.

Q. With respect to those products, who were your suppliers prior to April, 1959, when Alcoa acquired the Rome Cable Company?

A. Pretty generally our supplies came from Alcoa, from

Anaconda, from General Cable and from Rome Cable.

Q. In what manner did you purchase these products?

A. Well, there are two groups of purchases. The first are those that are made on blanket orders which are issued to these four suppliers over a period of time. Generally, to get us the quantity discounts which may prevail. Then there [fol. 1427] are another group of purchases that are made by the bidding of these companies.

Q. Now, with respect to the latter group, did you invite the companies to bid?

A. Yes.

Q. To submit a competitive bid?

A. Yes.

Q. Were any companies invited to bit other than the four you named?

A. No. Those were the only suppliers we used.

[tol. 1428] Q. Now, referring to the class of purchases done on a competitive bidding basis, to your knowledge, did the Reme Cable Company receive any business from your company on such competitive bids?

A. No, it was our experience that one of the other three bidders was generally submitting low bid, so that most of that business would go to Alcoa or to Anaconda or to

General Cable.

Q. Since the time of the Rome Cable acquisition, have you added another supplier to your group in order to take the place of Rome Cable?

A. No, we have not found it necessary.

Q. So that your suppliers in these products today are Anaconda, Alcoa and General Cable?

A. We are still talking about these products?

Q. Yes.

A. That's right.

Q. What are your reasons for limiting your supplier

group to these three companies?

A. We have done business with them for many years, with all three of them. We have been satisfied with the service and with the product we received and the service we had from them, and we see no reason to add anything, further. We feel, generally, that we might better be an im[fol. 1429] portant part of a supplier of business than to scatter our business so that no supplier is interested in supplying us and giving us the service that we want.

Q. Is such service an important factor in a public utility

business?

A. That's right.

Q. Are there other suppliers of these products available who might, if you choose, be added to your group of suppliers?

A. Yes. There are other manufacturers of these

products.

Q. Could you name some of them, please?

A. Yes, Southwire; Southern Electric; Reynolds Aluminum; Kaiser Aluminum. Those are four. There are probably others.

Q. Do these companies come around to see you soliciting

your business?

A. Yes, we talk with them. They tell us how good their factories are and what services they can render, and we always listen to them, but we have not felt it was necessary to add any of them to the list of suppliers.

Q. In your opinion, Mr. McCormac, does the fact that [fol. 1430] Alcoa by acquiring Rome Cable and adding to its line of products formerly manufactured by Rome, give

it an advantage in selling to you?

A. No. We see no difference in the position of Alcoa

now and the position of Alcoa and Rome before.

Q. Do you feel from the standpoint of a purchaser of these wire and cable products about which we have been speaking that Alcoa's position of Rome Cable has adversely affected you?

A. No.

Q. Do you anticipate that it might?

A. No. But if it did, we could correct it.

Q. How might you do that?

A. Well, we would take the business away from them.

Q. To one of these other suppliers?

A. That's right.

Mr. Adler: No further questions. The Court: Cross-examine.

Cross-examination.

# By Mr. Wertheimer:

Q. Mr. McCormac, you said that prior to April, 1959, your suppliers were Alcoa, Anaconda, General Cable and Rome Cable. Were any of these companies customers of Niagara Mohawk?

[fol. 1431] Yes.

Q. Which ones?

A. General Cable; Rome Cable; Anaconda through a subsidiary which it owns, and Alcoa had a very close connection through its factory up at Massena.

Q. Did that in any way influence your decision to confine

your business to these companies?

A. Yes, it does.

Q. Would you say that the utility would be disposed towards the customer of its—let me rephrase it, would a utility prefer to buy from a manufacturer who is a power customer?

A. Yes, we would.

Q. So the more plants that a manufacturer would have the greater would be its advantage in securing business from power companies.

A. I wouldn't use the word "advantage." I would say we would be more disposed to buy from him if he had more

plants in the area.

Q. I see. You mentioned that there are other companies supplying the products that you purchase. Suppose one of them was to change its price, for example, ACSR. Would you normally expect that the companies who do compete for your business would follow suit?

A. Yes.

- [fol. 1432] Q. So he presence of other companies making the product directly influences the kind of a deal that you can make.
  - A. That's right.
  - Q. Thank you.

### Redirect examination.

## By Mr. Adler:

Q. Mr. McCormac, would you continue to buy from a manufacturer located on your lines if such manufacturer failed to provide you with the service for the price that you could get from other manufacturers located elsewhere?

A. Oh, no. He would have to meet the specifications of the product we want, and the time deliveries when we want his product, and he would have to be equal in all other respects.

Mr. Adler: No further questions. ..

The Court: I suppose that the prices the utility pays, at least in New York State, are scrutinized by the Public Service Commission.

The Witness: That's right.
The Court: Anything else?

[fol. 1433] Mr. Wertheimer: No further questions.

GLENN ROLSTON, resumed the stand and testified further as follows:

# Direct examination. (Continued)

### By Mr. Bergson:

Q. Mr. Rolston, what product does Rome Cable, or did Rome Cable make prior to the merger with Alcoa? The major product classifications.

A. The major product classifications, bare copper and aluminum, insulated products of copper and aluminum, and holding to major product classes, a line of building wire, construction materials, power cable, control cable—what we

call instrumentation wires and cables that go into radios and televisions. Magnet wire in a limited line—what we call square and rectangular, which is primarily used in transformer windings. Mining types of cable, flexible cords. I would say that was a general statement of the products.

Q. Would you say that the major portion of the sales of Rome Cable, from a dollar standpoint, in wire and cable

was in insulated wire and cable?

A. Yes, I would say so.

[fol. 1434] Q. Substantially so?

A. Yes.

Q. Now, some of these insulated wire and cable products were insulated with aluminum as the conductor and some with copper as the conductor.

A. That's right.

Q. Now, taking a weatherproof wire, for example—was that made with aluminum as a conductor and copper as a conductor?

A. Yes, it was.

Q. I show you Defendant's Exhibit AR-30 for identification and ask you if you can tell me what that is?

A. This is one of our publications covering a neoprene covered weatherproof wire, in which the conductor can be furnished with either aluminum or copper.

Q. And is this known as a product bulletin?

A. Yes, we class it as a product bulletin. Contains essential data as to weights and thicknesses of coverings and—essential information.

Q. Is it offered to the trade as an indication of the product that you have to sell?

A. That's correct.

### [fol. 1435] OFFERS IN EVIDENCE

Mr. Bergson: I offer Defendant's Exhibit AR-30 for identification.

Mr. Mahaffie. Is that WP2A?

Mr. Bergson: Yes, WP2A.

Mr. Mahaffie: No objection.

The Court: Received.

(Defendant's Exhibit 30 for identification received in evidence.)

Q. Now, I show you a document, bulletin RCP 361 which has been marked for identification as Defendant's Exhibit AR-31, and ask you if you will tell the Court what that is:

A. This is a bulletin having similar information to that contained in the other reference, only covering a product which we refer to as secondary and service drop cable. And it is produced with either copper or aluminum conductors and may be insulated with either neoprene or polyethelene or combinations of rubber type insulations, and it is classed as a—let's call it a trade bulletin, giving essential information concerning the product.

Mr. Bergson: I offer Defendant's Exhibit AR-31 for identification.

[fol. 1436] Mr. Mahaffie: No objection.

The Court : Received:

(Defendant's Exhibit 31 for identification received in evidence.)

Q. I show you a document marked AR-32 for identification, which is bulletin RCP 200, and ask you if you will tell us what that is.

A. Well, I would classify this as a trade bulletin in which we have selected from our product line a varying group of products, among them being, for example, the bare and weatherproof wire which I have referred to, magnet wire, various types of building wire, either rubber or plastic insulated, service entrance cable, machine tool wire—I'm just picking at random a group of products, some of which are represented by I'd say samples on the middle board there.

Q. Would you look on the second page at the top lefthand corner, where it says "Bare and weatherproof wire."

A. Yes.

Q. And would you read the legends that appear under both illustrations in that upper lefthand corner.

[fol. 1436a] A. "Bare copper wire, aluminum, or ACSR in all tempers—sizes up to 1,500,000 mcm."

[fcl. 1437] Q. And the next one?

A. The next one reads "Weatherproof wire" and our trade name "Roprene."

Q. Which is neoprene?

A. Which is neoprene. "Rolene," which is polyethylene "or URC types."

Q. What is URC?

A. That is a designation established many years ago to describe the wire and is commonly used for fibrous cover types of weather proof wire. Then "the conductors may be copper, aluminum or ACSR. Roprene and URC types are also available in handy 500-foot coils packed in individual cartons—sizes 14 through 4 AWG soft copper."

Q. Now, would you look in the lower right-hand corner of the same page, to the illustration under which is the legend "self-supporting drop and secondary cable" and will

you read into the record what it says there?

A. "Self-supporting service drop and secondary cable. Embodies the time-proven construction of insulated power conductors spiraled around a bare neutral for mechanical support. Power conductors are Roprene (neoprene) or Rolene (Polyethylene) insulated. Power conductors and [fol. 1438] neutral messengers may be copper, aluminum, or ACSR. Copperweld neutrals are also available. Rome Cable manufactures a special self-supporting cable for overhead distribution where tree conditions are a problem."

Q. Now, you testified a few moments ago from a dollar volume standpoint the major portion of Rome's business was in insulated products. Were these insulated products

primarily copper products or aluminum products?

A. Primarily copper products.

Q. Now, who were Rome's major competitors in its wire and cable business?

A. Oh, I would say without order of preference, Collyer Insulated Wire Company, Crescent Insulated Wire and Cable Company, Narragansett Wire Company, Hatfield Wire and Cable Company, General Electric Company, General Cable Corporation, Anaconda Wire and Cable, Phelps-Dodge Copper Products, Simplex Wire and Cable, and I think I could go on for another—we considered in the various product lines each one was a competitor where they were trying to get that particular product of business. But [fol. 1439] I have just named ten or a dozen names in general.

Q. And in the aluminum?

A. In the aluminum field you have Alcoa, Kaiser, Reyn-

olds, General Cable, Anaconda Wire & Copper, Nehring Electrical Works, Central Cable, what was Southern Electric, now Olin, Southwire. I would say they constituted representative competition in that particular field.

Q. Now, going first to the copper phase of the business, did you encounter price competition in the copper products?

A. Yes, sir, we did.

Q. And when you encountered that competition what company or companies would lead the downward trend?

A. Well, I think that I would have to clarify that. I would say because of what we call the building wires or construction materials, there are a number of companies engaged in that field, so I would like to answer in that particular field as distinguishing for the moment from power cables or control cables.

Q. Go ahead.

A. I would say in the building wire or construction, Collyer, Crescent Insulated, Peranite Division of Essex Wire Corporation, American Insulated Wire Company and [fol. 1440] General Cable, and Phelps-Dodge and Anaconda. I think that the only way that I can honestly answer that is that these things go in cycles until the market situation begins to collapse and when it does, you might say one follows the other, when you get into severe competition.

Q. Of the companies that you mentioned, which of them

were integrated copper companies?

A. Well, Phelps-Dodge Copper Products and Anaconda Wire and Cable would be the only ones in this.

Q. So that on occasion the company that led the price cut-down might have been a non-integrated company?

A. Yes, it might.

Q. Was it frequently the case?

A. I would say yes.

Q. More frequently than not?

A. Well, if I were to use roughly a period of recollection say in the last ten years, which I think is a cross section, I believe I would say so, yes.

Q. Now, let me ask you this, so far as wire and cable with aluminum as a conductor is concerned, do you find that there is competition between the so-called integrated companies?

A, Yes.

[fol. 1441] Q. How does that competition manifest itself?

A. I would say between lowering prices where the levels sometimes get down to what we call severe competition.

Q. And would you characterize the competition in this field as competition between the integrated companies on the one hand and non-integrated companies on the other hand?

A. I don't believe I would, no. There may be some instances of it, but I wouldn't necessarily say so.

Q. When the non-integraters compete and the integraters compete?

A. That's right.

Q. Each with each other and each against the other?

A. That is correct.

Q. Now, when, prior to the acquisition, did Rome Cable compete with Alcoa in any wire and cable products?

A. Only in what has been referred to here as the line wire and triplex, or let's call it multiplex constructions, and to a very minor degree we made a limited size range of ACSR bare. That would be the only case where we competed one with another.

Q. Now, on this ACSR bare, which you said was a limited size range, I assume from previous testimony that it was [fol. 1442] 4/0 and below?

A. That is correct.

Q. And did you compete price-wise with this product?

A. Well, I don't know as I exactly get your question. We only had this product line to tie in in some instances with the overhead insulated types of wires. I would say no, basically, we did not progressively compete price-wise on ACSR bare.

Q. Would it be a fair statement to say that your ACSR was carried—strike that.

Maybe you have answered this, but let me put it again. For what purpose or why did you carry this limited line of ACSR?

A. Well, in some cases where either full carloads of what we call overhead conductors were required, there would be an instance where there might be, say, 15,000 pounds of ACSR 4/0 or 1/0 required and 15,000 pounds of one of these covered line wires. And we would use that. For instance, you could not compete if you only had say half a carload of

material. So we used it to round out in some instances full carload quantities.

[fol. 1443] Q. Did Rome bid for the business of publicly

owned utilities in ACSR?

A. I would say very, very rarely. I couldn't number very many cases.

Q. How about your covered product, did you bid on those?

A. Yes, we did.

Q. And what was your selling policy in regard to those bids?

A. Well, if you mean if we received the inquiry, we would quote generally on published price schedules where they may be. But in some cases, particularly on what we call the smaller municipal operations, where the tendency was to buy through electrical distributors or wholesalers, our quotation would be made to them by one of these electrical wholesalers or distributors.

Q. Did you, in pricing your product, price your product

to beat competition or to meet competition?

A. No, in general we felt very strongly that we didn't want to go beyond competition, so I would answer you that we priced it to meet competition.

[fol. 1444] Q. Now, since Rome Cable Division has been acquired by Alcoa—since the acquisition—in your opinion as director of marketing for Rome Cable Division of Alcoa, do you have the ability to fix or establish a price and make it stick?

A. No, we do not.

Q. What would prevent you from doing that?

A. Well, I would say the failure of competition to come to the level—if we were attempting to fix it by the publication of our own price schedules.

Q. So that your prices after initial determination by you

are ultimately determined by competition?

A. That's correct.

The Court: You did not offer 32?

Mr. Bergson: I didn't? Oh, thank you, your Honor. I offer Defendant's Exhibit AR-32 for identification.

Mr. Mahaffie: No objection.

The Court: Received.

Mr. Bergson: Thank you, your Honor.

(Defendant's Exhibit 32 for identification received in evidence.)

[fol. 1445] Q. Now, Mr. Rolston, I show you Government's Exhibits 134 and 135 and ask you to look at them and tell us whether or not you are generally familiar with the situation concerned therein.

A. Yes, I am generally familiar.

Q. Would you tell the Court the circumstances which gave rise to this correspondence. This correspondence, your Honor, is a request for listing at TVA for certain Rome products.

A. Well, we were advised by our sales representative in the field that in order to be put on the approved list to obtain inquiries from the Knoxville Utilities Board, which is in Knoxville, Tennessee, that it would be necessary to go to the appropriate people in the Tennessee Valley Authority and have them review your facility and—we will call it put you on the approved list of transmission and other types of conductors. TVA has had a requirement that they must send and engineer up to your facility and determine whether or not your machines and other capabilities are satisfactory, and in this case that request was prompted by the fact that such examination and listing by TVA would be necessary in order to get the opportunity to quote and supply to the [fol. 1446] Knoxville Utilities Board.

Q. At the time you made the inquiry to TVA did you have any intention of bidding for any of TVA's business?

A. Oh, yes, we have always bid TVA.

Q. I beg pardon. TVA's transmission business.

A. No, we did not have.

Q. You didn't even make transmission sizes, did you?

A. No, we did not.

Q. Did you intend at that time to go into the business of making transmission sizes?

A. No, not at this time.

Q. Did you have any plans for going in?

A. We had no plans.

Q. Now, so the purpose of this request was solely in order to enable you to bid on distribution products.

Mr. Mahaffie: I object to the form of that question Cross-examination of the witness.

The Court: It is leading, although I think he has prob-[fol. 1447] ably testified to it.

Mr. Bergson: I am just trying to summarize, but it is

all right.

The Court: Tell us again what its purpose was.

The Witness: The purpose of our request to the TVA for being placed on what we call the approved list was in order to utilize that approval in soliciting inquiries for products from Knoxville Utilities Board, of Knoxville, Tennessee.

Q. When you were acquired by Alcoa you did not pursue that request?

A. No, we did not.

Q. Did you hear anything from the TVA about that?

A. I didn't at our level immediately, but subsequently we heard about it as a result of a conversation between a representative in TVA and I believe a representative of our office in Chattanooga.

Q. Do you recall the date of that inquiry by TVA?

A. Well, no, I can't recall the exact date.

[fol. 1448] Mr. Bergson: I am sorry for this delay, your Honor. There are so many tables here to shuffle, we just unshuffled one. I will come back to that rather than delay.

Q. Now, Mr. Rolston, in the course of your business do you get requests from customers for quotations of wire and cable using both aluminum and copper as the conductor? I should say requests for alternate quotations.

A. Yes, we do.

. Q. And how frequently do you get requests of that kind?

A. Well, I can answer that in two ways. At our headquarters the number of cases we would have would be only a fraction of those that are received throughout the country, because many of our products are covered by published price schedules in which our district offices or the salesmen actually traveling on the road could make these alternate quotations. We would be likely only at our headquarters office to get these for major jobs requiring engineering design and information of that type, but we get them in both ways.

[fol. 1449] Q. I show you a document marked AR-34 for identification, which is entitled "Request for quotation from

Boston office," dated January 5th, 1959, and ask you if you received such a request for quotation.

A. Yes, this is our quotation request.

Q. Now does that request for quotation ask for quotation for conductor or for wire and cable with aluminum as the conductor and for a comparable quotation with copper as the conductor?

A. It does.

Q. Now, in this document, Defendant's Exhibit AR-34 for identification, what are the comparable items copper and aluminum?

A: Well, Item No. 1 on here represents the quantity 2,000 pounds of three-conductor 4/0. Do you want me to read all the description?

Q. No.

A. What we call 15,000 volt cable bound to a supporting messenger with an alternate described as 1-A aluminum conductor having a circular area of 336,400.

[fol. 1450] Q. Now, was that a comparable conductor? Are

these comparable conductors?

A. In this case, yes, normally, but in this case I think the conductor size was selected by the engineer of the Boston Edison Company. There are two types of determination of what is comparable. This comparable aluminum equivalent was equal—let's see, 336, equal resistance.

Q. Now, does this show, which of the conductor metal is more expensive per thousand feet according to your quota-

tion here?

A. According to our quotation in three conductor 4/0 copper cable we quoted \$3,190; on the aluminum cable we quoted \$4,185. The aluminum alternate was higher by slightly over \$200 per thousand.

Q. Now, Items 1B and 1C, are they comparable?

A. Yes, they follow the same scale except it is a single conductor copper asking for 4/0 copper, which we quoted as \$1150, with an alternate of 336,000 aluminum, which we quoted at \$1235, the aluminum was slightly higher.

#### OFFERS IN EVIDENCE

Mr. Bergson: I offer Defendants' Exhibit AR-34 for Identification.

Mr. Mahaffie: I have no objection. [fol. 1451] The Court: Received.

(Defendants' Exhibit AR-34 for Identification received in evidence.)

Q. May I ask you this about Defendants' Exhibit AR-34. Are the conductors on which you are quoting here for use in overhead construction?

A. Yes. It is a pre-assembled cable.

Q. I now show you a document which has been marked Defendants' Exhibit AR-35 for Identification, which is a request for quotation from the New York office, or inquiry from the Public Service Electrical and Gas Company and ask you if you are familiar with that document?

The Court: What is its number, Mr. Bergson?
Mr. Bergson: 35. I have skipped 33, your Honor. I will
get back to that.

A. Yes. This particular company, Public Service Electric and Gas Company, has what we call detail specifications for the various types of insulated wires and cables that they purchase, and in this particular inquiry they ask us to quote on the items, sizes and equipment designated as specification 86 on copper.

[fol. 1452] Q. Yes.

A. And an alternate on specification 87, which is for aluminum. And they describe completely in these two specifications the product and how it is to be made and we simply indicate the relative prices for the cable design that they have selected by their specification.

The Court: What is its date?

The Witness: This particular one is dated December 1, 1958.

Q. Now, on the first item, what is the price quoted for aluminum?

A. The price quoted for aluminum was \$902 per thousand feet.

Q. And the price for the copper?

A. \$974 per thousand feet.

Q. So copper was higher than aluminum there?

A. That's right.

Q. Now, on the next item, what was the price quoted?

A. The price quoted for the copper was \$1650, and the price quoted for the aluminum was \$1690.

Q. So that there the aluminum was higher than the copper?

A. That is correct.

[fol. 1453] Mr. Bergson: I offer Defendants' AR-35 for identification.

Mr. Mahaffie: No objection.

· The Court: Received.

(Defendants' Exhibit 35 for Identification received in evidence.)

Q. I now show you a document that has been marked for identification as Defendants' Exhibit AR-36, which is a request for a quotation from the New York district dated 12/1/58 on an inquiry from Public Service Electric and Gas Company, and I ask you if you are familiar with that document?

A. Yes, I am. And this is essentially the same principle as I quoted before. It happens to be a different specification.

Q. Is it for an overhead product?

A. Yes. This is for a reverse lay self-supporting cable.

Q. And what is the price quoted for copper, here?

A. Copper was quoted at \$3,010 per thousand feet and the aluminum was quoted at \$3,755.

Q. And what was the date of this inquiry?

A. 12/1/58.

Mr. Bergson: I offer Defendants' Exhibit AR-36 for identification.

[fol. 1454] Mr. Mahaffie: No objection.

The Court: Received.

(Defendants' Exhibit 36 for Identification received in evidence.)

Q. I now show you a document marked Defendants' Exhibit AR-37 for identification, which is a request for quota-

tion from the New York district on an inquiry from Public Service Electric and Gas Company, dated 11/25/58, and

ask you if you are familiar with that document?

A. Yes, I am familiar with it. This is the same type of an inquiry in which they have another cable specification with the appropriate number in which they ask specifically for quotations to specification 84-1 for copper, and 85-1 for aluminum.

Q. And on the first alternate group of products the quotation for copper was what?

A. The quotation for copper was \$1,086.

Q. And the quotation for aluminum was how much?

A. \$1,204 per thousand.

Q. So that copper was cheaper than aluminum?

A. That is correct.

Q. And the second group, the quotation for copper was what?

[fol. 1455] A. \$502 per thousand feet.

Q. And the quotation for aluminum?

A. \$792 per thousand feet.

Q. So again the quotation for copper was lower?

A. That is correct.

Mr. Bergson: I offer Defendants' Exhibit AR-37.

Mr. Mahaffie: No objection.

The Court: Received.

(Defendants' Exhibit AR-37 for identification received in evidence.)

Q. Now, I show you Defendants' Exhibit AR-38 for identification, which is a request for a quotation from the New York office dated 11/5/58 on inquiry from the Public Service Electric and Gas Company, and ask you if you are familiar with this document?

A. Yos, I am familiar with it.

Q. And the products about which inquiry was made are overhead products?

A. Yes, they are, and there are a considerable number of items, and this again is 4 specification and others, in which they ask for quotations on copper and aluminum on the appropriate specifications, and we have quoted these prices as shown.

[fol. 1456] Q. And in some instances—would you give the comparable figures for comparable aluminum and copper

products?

A. I will try to. This happens to be one of those cases where they make the selection of the alternate size of conductor that may not follow the normal pattern. The way it is worded, I am not sure which is the alternate. Let's see. They refer to this specification of aluminum as being 14-2; the alternate for copper being 22-4.

Q. Well, let me ask you this, on the first item which is for-

A. There is no alternate. I think what happened is on Item No. 1 on the inquiry, it has a quantity of 30,000 feet. I find no, for that particular item, I find no aluminum alternate.

Q. That is just a request for copper?

A. That's right.

Q. In the second item?

A. In the second item it would appear to me that the copper is \$1,665, and the aluminum \$1,488.

Q. Right.

A. And then moving down to the next item, the aluminum is \$1,986 per thousand and the copper \$2,260. And then the [fol. 1457] next item, the copper, \$3,010 per thousand feet and the aluminum, \$3,755. And then you come into two items in which there is not a direct comparison in size, that they have selected the alternates and they work out this way, 350,000 circular mil in copper which we quoted at \$4,290; and 600,000 circular mil aluminum \$4,280.

Q: Ten dollars difference?

A. Ten dollars difference. But on the last item, 530,000 circular mil copper at \$5,710, with an alternate of 3-conductor 800,000 circular mil aluminum of \$5,110.

Q. So there aluminum is cheaper than copper?

A. That is correct.

Mr. Bergson: I offer Defendants' Exhibit AR-38.

Mr. Mahaffie: No objection.

The Court: Received.

(Defendants' Exhibit AR-38 for identification received in evidence.)

[fol. 1458] Q. I now show you Defendants' Exhibit AR-39 for identification, which is a request for quotation from your New York office of an inquiry from Consolidated Edison dated 12/7/58, and ask you if you are familiar with that document.

A. Yes, I am.

Q. Are the product you are asked to quote on there overhead products?

A. Yes, they are.

Q. Now, is one quotation requested for copper and the other quotation requested for aluminum?

A. Yes, it is.

Q. Can you read-

A. That's just what I was hesitating about. The printing, I can't read it on this copy.

Q. Well, it looks like 28 something. Looks like copper is the more expensive.

A. That's what it looks like. Maybe one of the copies—yes, you can tell from this copy.

Q. Would you read it.

A. This inquiry from Consolidated Edison requests prices on three-conductor 4/0 copper, self-supporting aerial cable, [fol. 1459] and we quoted twenty-eight fifty per thousand feet. They requested an alternate of three-conductor 300,000 circular mil aluminum of the same construction, and we quoted a price of \$25.10 per thousand feet.

Mr. Bergson: I offer Defendant's Exhibit AR-39.

Mr. Mahaffie: No objection.

The Court: Received.

(Defendant's Exhibit 39 for identification received in evidence.)

Q. I now show you a document marked Defendant's Exhibit AR-40 for identification, which is a request for quotation from the New York office on an inquiry from the Long Island Lighting Company, dated February 21st, 1958, and ask you if you are familiar with that document.

A. Yes, I am.

Q. Does that document request a quotation on overhead products?

A. Yes.

Q. Now, can you match the comparable copper and alumi-

num product here?

A. I can try. This is further involved by the fact that some of the alternates have copper weld messengers. Let's [fol. 1460] see. I am afraid without quite a considerable study of this I can't match them up.

Mr. Bergson: I will offer it in evidence, your Honor, solely for the purpose of showing that alternate requests were asked on both aluminum and copper.

The Court: All right.

Mr. Mahaffie: The only trouble I have with this is that I can't tell from the face of it if alternate requests are asked. If you say they are, I suppose they are, Mr. Bergson, but I can't make any sense of it.

Mr. Bergson: There are nine items here, your Honor, and of course you can't have alternate requests on nine items. One is for copper alone and the other four match up. It is just difficult in matching the four up.

The Court: Why don't I defer and then if Mr. Rolston

can straighten it out-

Mr. Bergson: Maybe he can do it at recess time. [fol. 1461] The Witness: Yes, I think I can.

Mr. Bergson: Right.

The Court: I will defer ruling on the admissibility at this time.

Q. Now, Mr. Rolston, the government introduced in evidence in its case government Exhibits 270, 271, 272 and 273 which were also requests for alternate quotations. Did you cause to be made a search of your records to determine what happened on those requests for alternate quotations?

A. Yes, I did, a certain number.

Q. And there were four as I recall it. What did you find in respect to the four--or five. There were five. Did you find that you didn't get the order for some of them?

A. Yes, that's my recollection.

Mr. Mahaffie: Object again to the form of the question, your Honor.

The Court: Overruled.

Q. That you didn't get the order for some of them?

A. Yes.

- Q. Now, upon search did you ascertain that you were the [fol. 1462] successful bidder on two of them?
  - A. Yes.
- Q. Now I show you Government Exhibit 271, which is a request for quotation from the Boston district on an inquiry from the Boston Edison Company, 'dated November 7th, 1960, and ask you whether that request asks for quotations on overhead products.

A. Yes, it does.

Q. And what prices did you quote?

A. The request describes the copper conductor as a—by number AWG with neoprene covering on which we quoted \$99 per thousand feet. They did not describe the unit for aluminum, but we quoted what we call the aluminum equivalent, which is size 1/0 7-strand with neoprene at \$61 per thousand feet; which is the alternate aluminum conductor.

Q. \$99 to \$61?

A. 99 to 61.

Q. Did you get an order for any part of this business?

A. My recollection is that we got an order from Boston Edison Company for not the entire amount shown, but a [fol. 1463] portion of the quantity that was on the inquiry.

Q. I show you defense Exhibit AR-41 for identification, which is Rome Cable sales order dated 11/23/60, and ask you whether that is the sales order on that request for quotation.

A. This is the sales order resulting from that quotation.

Q. What does that sales order show?

A. Sales order shows quantity 200,000 feet of No. 2 7-strand copper with neoprene covering at a price of \$99 per thousand feet.

Q. So that you received an order for half of the requirements in copper?

A. That's correct.

Mr. Bergson: I offer Defendant's Exhibit AR-41 for identification.

Mr. Mahaffie: No objection.

The Court: Received.

(Defendant's Exhibit 41 for identification received in evidence.)

Q. Now I show you Government exhibit GX-72 and ask

you to describe that.

A. Well, this is rather involved. This is an inquiry for [fol. 1464] plant expansion project on the Dow Chemical Corporation in Baton Rouge, Louisiana, and it includes at least ten or a dozen items with the appropriate alternates—some of them what we call custom built types of cable specifications.

Q. Did you get the order for part of that?

A. My recollection is that the only item we got off of this was what was originally Item No. 9 on this quotation. Represented approximately 45,000 to 700,000 circular mil aluminum with 6/64ths polyethelene covering.

Q. I show you a copy of Rome Cable Corporation-

A. Well, this is the advance order that comes in from the district. This is the order that resulted from this quotation, 45,000.

- Q. And that is Defendant's Exhibit AR-42 for identification. Now, the price on that was \$405 per thousand feet?
  - A. That is correct.

Q. What was the comparable copper price you quoted?"

A. Well, the copper product comparable is sold on a [fol. 1465] poundage basis. We quoted 55.07 cents per pound. I haven't got paper—in order to convert that to per thousand feet—I know it will be considerably greater, but I'd have to——.

Q. I don't think it is necessary.

A. The copper price is higher. .

Q. Now, was this for overhead purposes?

A. Yes.

Mr. Bergson: I offer Defendant's Exhibit AR-42.

Mr. Mahaffie: No objection.

The Court: Received. .

(Defendant's Exhibit 42 for identification received in evidence.)

Q. Now, Mr. Rolston, to get back to this Knoxville Utility Board situation, I show you Government Exhibit GX-185 and ask you if that refreshes your recollection as to when you had an inquiry from the Tennessee Valley Authority as to whether or not you were still interested in being on the approved list?

A. Yes, it does. The date of this telegram indicates April

14th, 1960.

- Q. Do you know when the government brought its law-[fol. 1466] suit against Rome and Alcoa for the acquisition of Rome Cable?
- A. My recollection is it is a matter of a few days of that date.

Q. Before!

A. Before.

Q. Prior to the time you made your original inquiry, up to that time you had heard nothing from TVA?

A. To the best of my knowledge, no.

Q. Mr. Rolston, you are familiar with the term "service drop"?

A. Yes, I think I am.

Q. Do you know what constructions of wire and cable are used for service drop purposes?

A You mean all of them or the most common ones?

Q. Well, the most common ones first.

A. Well, I would start off by describing the—did you use the word cable, or service drop?

Q. Service drop, I said.

A. The weatherproof or covered line wire is one form of conductor used for service drop. I prefer to use the term multiplex or duplex, triplex or quadruplex as a service drop [fol. 1466a] conductor. The type SD cable which is I believe on the exhibits. The type K cable which is commonly referred to as the flat ribbon type of service drop cable. And 1'd say that was—with all modifications.

[fol. 1467] Q. Which are the two most prevalent uses?

A. Two most prevalent uses would be the triplex or multiplex type or single conductor line wire, weatherproof.

Q. And the single conductor line wire, weatherproof, how is that strung?

A. It has two or three open wires running from the secondary line to the service connection.

Q. Now, as director of marketing for Rome, when you sell weatherproof line wire to a utility or when you sell triplex or multiplex cable to a utility, do you have any way of knowing to what use that wire is put by the utility?

A. Well, in the first case of the weatherproof or covered wire there is very little chance, I will say your local people would know the standard practice, but to put it quantitatively you would not know. With regard to the multiplex type there may be based on the conductor size being used as a secondary cable line service drop cable.

Q. So that you wouldn't know whether when you sold the certain size of triplex, whether it was being used as a sec-

ondary distribution cable or a service drop cable?

A. You would not positively, no.

[fol. 1468] Mr. Bergson: At this time, your Honor, I would-like to offer in evidence Defendants' Exhibit AR-33 for identification.

This exhibit is a letter from Olin Mathieson Chemical Corporation to the Anti-Trust Division in response to an inquiry from the Anti-Trust Division for information for use in this case. The information is given by Olin Mathieson, and in reporting figures for drop service cable, which I assume is the service drop cable, there is a footnote to the letter, "Drop-service cable and neoprene and polyethylene covered line wire and cable may be used as drop service cable. Line wire and cable has arbitrarily been calculated at 20 per cent of the total."

I offer this letter from Olin Mathieson, to the Department of Justice, dated August 4, 1960, as Defendants' Ex-

hibit AR-33.

Mr. Mahaffie: We object to it, your Honor. If this document is offered to show, as I believe it is, that Olin Mathieson, in responding to our request had or found it necessary to make an arbitrary calculation of the amount of these products going into service drop cable, and if that is the [fol. 1469] purpose for which Mr. Bergson is offering it, and I believe it is, we object on the ground of—

Mr. Bergson: I am offering it for the purpose of showing that line wire and service drop cable are used for other than service drop purposes, and to that extent it has probative value. You elicited the information and we didn't, and they said that they estimated it at 20 per cent, and to the extent that it has probative value I am offering it for that purpose as well.

Mr. Mahaffie: The only point I want to make with respect

to this, your Honor, the Government here asked Olin Mathieson to state how much their insulated or covered aluminum production in given years was service drop cable. Now, the fact that Olin in responding to this had to calculate arbitrarily a 20 per cent figure indicates, to be sure, that that Olin did not know how much of the aluminum insulated products it made was service drop. It does not prove and isn't relevant to show whether Olin could tell how much of [fol. 1470] its total insulated wire and cable went into service drop.

Mr. Bergson: Your Honor, I submit it also goes to the

question of the validity of the Census Universe.

Mr. Mahaffie: That is just what I am getting at. The Census Universe on service drop is aluminum and copper. This is aluminum only.

Mr. Bergson: It is part of it.

The Court: I don't quite see—I don't know if I am following you or not. Perhaps to make the picture complete the request made by the Government to Olin, the Olin firm, ought to be a part of the exhibit. That is, if it is explanatory in any way. If one goes in, why, probably the other ought to go in. But I assume that you asked the Olin for facts, with the intention of using it. Now, I would assume that the defendant has the right to use it.

Mr. Mahaffie: Oh, certainly, your Honor. I am objecting to the relevancy of this to prove what Mr. Bergson thinks

it proves.

[fol. 1471] The Court: Isn't that argumentative rather than anything else. Maybe it proves it or maybe it doesn't. You say it doesn't and he says it does, and probably some fine day, maybe in July, I guess I have to figure out whether it does or not. Actually, I am not impressed with the whole thing, because service drop may be composed of different metals or different merchandise. Isn't that a fact!

Mr. Mahaffie: Service—the use of service drop may be composed of this open wire or the multiplex. Service drop

cable is an identifiable product, we submit.

The Court: Of course, it is identifiable. You mean it can only be used for service drop?

Mr. Mahaffie: No, it can be used for some parts of secondary distribution as well.

The Court: That is what I thought. I can't find after

listening to both of you gentlemen, to put it frankly, I don't know what you are talking about, and I don't see any dispute here.

[fol. 1472] Mr. Bergson: We contend service drop is not a

line of commerce.

The Court: Yes, I understand that.

Mr. Bergson: But against the possibility that it might be held to be a line of commerce, I feel that we must adduce evidence at this time. It doesn't indicate at all that we are supporting that line of commerce, of which I am sure your Honor is aware.

Mr. Mahaffie: My objection is to the materiality of this document to assault the Census Universe, which is what

it is offered to show.

The Court: I will receive it, and if you wish, it may be wise to offer the request with it so that it may be of some value.

Mr. Mahaffie: Very well, your Honor. Would the Court like us to do it now?

The Court: Suppose I take a short recess.

(Defendants' Exhibit AR-33 for identification received in evidence.)

The Court: Take a short recess. The Clerk: Court is in recess.

(Whereupon, a short recess was taken after which the trial was resumed.)

[fol. 1473] The Court: All right, gentlemen, we will start again.

Q. Mr. Rolston, I show you Defendant's Exhibit AR-40 for identification and ask you whether during the recess you were able to line up any comparable aluminum and copper products.

A. Yes, I have identified Item 2 which is a two-conductor 4/0 copper pre-assembled cable with Item No. 6 which is an alternate of 336,400 circular mil aluminum, and the copper price on Item 2 is \$888 per thousand feet, and the aluminum price, alternate, is \$729 per thousand feet. I also found that Item No. 4 which is a three-conductor 4/0 copper cable with a copper weld messenger, that the alternate item is

No. 9, requiring an alternate of 336,400 circular mils and the respective prices are \$1148 for the copper item and \$975 per thousand feet for the aluminum item.

Mr. Bergson: I offer Defendant's Exhibit AR-40.

The Court: With that explanation, I will receive it. Mr. Mahaffie, do you want at this time to offer the government's

request to Olin?

[fol. 1474] Mr. Mahaffie: Yes, your Honor. I will also renew my objection to the defendant's exhibit and offer government Exhibit 497 for identification, which is a letter dated July 6th, 1960, from the acting assistant attorney general to the vice president and general counsel of Olin-Mathison.

The Court: I will receive both exhibits.

Mr. Mahaffie: All right, sir.

By Mr. Bergson:

Q. Now, Mr. Rolston, many of these requests for alternative quotations that I showed you today were dated in 1958. Do you still receive requests for alternate quotations?

A. Yes, we do.

Q. Now, since the acquisition of Rome by Alcoa where you now are in a position to offer overhead transmission cable as well as the distribution products which you made before, do you find that Alcoa Rome has any advantage in being able to offer to utilities a full line of products?

A. No.

[fol. 1475] Q. Would you explain why.

A. Well, these products are you might say separate unto themselves. Particularly if a transmission line design is required by the utility, the ability to quote and supply a conductor for that transmission line is—in fact, in some of the utilities it is even in a different department. The general distribution requirements as purchased by utilities may be handled on a basis of what they call their ninety day or six months requirements of distribution size and type, and consequently they are just as separate as maybe two different automobiles as far as utilities is concerned. I don't consider it of any significance.

[fol. 1476] Q. We have spoken before of the Phelps-Dodge

Company. Does that company manufacture wire and cable products?

A. Yes, they do.

Q. What conductor metal do they use?:

A. Certainly primary copper.

Q. Has Rome Cable or Alcoa-Rome ever received a request from Phelps-Dodge to furnish stranded aluminum conductor, for insulation by Phelps-Dodge?

A. We have,

Q. And has Alcoa ever received a request for quotation from Phelps Dodge for the furnishing of E.C. aluminum redraw rod?

A. We have.

- Q. If you know, do you know for what purpose Phelps-Dodge purchased or requested such a quotation on E.C. redraw rod?
- A. I think associated with timing that we have indication that they required it for an ACSR quotation if they were successful.
  - Q. Do you associate that with any particular project?
- A. Yes, I would say that due to timing I could associate that with a project.

Q. What project?

[fol, 1477] A. Project of the Consolidated Edison Company for 345 k.v. transmission hookup.

Q. Involving how many pounds of aluminum?

A. I would say the net aluminum weighed in the neighborhood of three and a half to three and three-quarter million pounds.

Q. In your capacity as vice-president in charge of market-

ing do you have anything to do with conduit?

A. I do.

Q. Does the Rome Cable Division of Alcoa offer both steel and aluminum conduit for sale?

A. We do.

Q. Do you find that in offering these products that steel and aluminum are in competition with one another?

A. Yes, we do.

Q. Does the pricing of steel conduit have any effect upon the price of aluminum conduit?

A. Yes, I think it does.

Q. And if the price-what would happen to the price of

aluminum conduit if the price of steel conduit were to go down?

A. I believe that the price of aluminum would go down, too.

[fol. 1478] Q. Are steel and aluminum conduit used for the same purposes?

A. Essentially for the same purposes.

Q. And that is for-

A. The raceway through which you pull insulated wire.

Q. And whom do you consider to be your competitors in the sale of conduit?

A. Which, steel conduit?

Q. All conduit.

A. Well, in steel conduit, Triangle Conduit and Cable; Pittsburgh Standard, General Electric Company; Clayton Mark; Republic Steel; Youngstown Sheet and Tube; Clifton Conduit Division of General Cable Corporation. Wheatland—I forget the last name—Wheatland Products. H. K. Porter; Walker Brothers. Those that I have named are all principal steel conduit manufacturers.

In aluminum, Kaiser, Reynolds, Channel Master, Hazel-wood. What I am hesitating for is those companies we have do not manufacture the product but have an arrangement whereby they sell under what is called a general label. This consists of General Cable and Pittsburgh Standard. They

are all that I can think of at the moment.

[fol. 1479] The Court: Do any of them sell both steel and aluminum?

The Witness: Yes, for instance Triangle Conduit and Cable did sell both of them. Clifton Division of General Cable did sell both. One that I hadn't mentioned, National Supply of Armco, they have both steel and aluminum. Walker Brothers has both available. Those are about the only ones I would think of at the moment.

Q. Now, does the Rome Cable division consign aluminum conduit?

A. Yes, we do.

Q. Why do you do that?

A. I think we do it because of competitive conditions where aluminum conduit is offered on a consignment basis, and we also have a similar policy.

Q. You did it to meet competition?

A. That's correct.

Q. Now, you heard Mr. Koger testify this morning about the competition that your Torrence plant faced from the manufacture of conduit on the east coast or east of the Mis-[fol. 1480] sissippi. Do you generally subscribe to that testimony?

A. Yes, I do.

- Q. Now, Mr. Koge was asked on cross-examination why Rome Cable made certain market studies on the basis of the so-called eleven western state area. Can you tell us why such studies were made on that basis?
- A. I would say only because rather than call it a market area, it is a frading area, and the only place where we have ever been able to get any indication made by other we will say outside sources of what the estimated market is or happens to be for eleven states. And consequently we have applied our sales for a period in comparison with those estimates. We, however, have not considered it as necessarily being a market area. I think for years and years everybody in the business has been trying to find out what the markets are in any state or any trading area, and the term eleven west coast states is practically synonymous. Anytime you go to California, meet the chamber of commerce or anyone else, all the figures they are talking about on population and growth they call the eleven west coast states, so we [fol. 1481] use that as one source of some other person's estimate of market potential on it and compare it with our own figures in that area.
- Q. The competition you faced in this area—where did that come from?
- A. From all other manufacturers. Principally east coast and near middle west manufacturing sources. I would say when steel conduit we are referring to, they are all selling in that market.

The Court: Is that competition any different in the eleven western states than it is in the fourteen states served by the Torrence plant?

The Witness: No.

Q. Now, Mr. Rolston, yesterday there was introduced in evidence through Mr. Hemeter Defendant's Exhibit AR-29,

which is a tabulation of potential business reports which Mr. Hemeter testified that he compiled and prepared on a day-to-day basis in the course of the performance of his duties at Alcoa. In his tabulation, Mr. Hemeter had a chapter entitled "Business lost to unknown." Were you furnished a copy of that portion of the report which was entitled "Business lost to unknown"? [Tol. 1482] A. We were.

- Q. Did you make a check against the records of the Rome Cable Corporation to find out if Rome Cable got any of this unknown business?
  - A. We did.
- Q. And did you find that Rome Cable did get any of this unknown business?
  - A. Yes.
  - Q. And what business did you find that Rome Cable got?.
  - A. My recollection was-
  - Q. Maybe this will help refresh your recollection.
- A. Out of all the items, I think we got four that were reported in this "unknown" list.
- Q. I have shown him, your Honor, a copy of a letter to me stating what they had found, and I am just handing it to him for the purpose of refreshing his recollection.
  - A. Do you want me to summarize it? Read it?
- Q. Yes; summarize it. Let me show a copy to the Government. Does this refresh your recollection as to what business tabulated in the unknown business lost reports Rome. Cable secured?
  - A. Yes, it does.
- [fol. 1483] Q. Will you please state for the record what that was?
- A. It is pretty voluminous. Do you want to go by the PBR reference?
- Q. State it by the job number and the amount of pounds involved.
- A. The first one is Philadelphia Electric Company which was taken from the lost business report of PBR 3560 testified by Mr. Hemeter, and we found we got an order for 21,900 feet of this item, having a tetal weight, as I see on here of about—well, the only way to get this accurately in the record is to read exactly what it says:

"Our order 3707 entered on March 21, 1957, called for 50,000 feet of three conductor aluminum triplex."

Also on this same order shows an item of No. 4 ACSR neutral for shipment August 27, '57, and on the bottom of this item it contains a note.

"In view of the dates of order and shipment it is doubtful if either of these particular items refer to PBR 3560." In other words, I made an attempt to identify it but they don't spell out.

Q. Which ones were you able to find out and identify as

being the ones referred to here!

[fol. 1484] A. We were definitely able to identify one from the Public Service Electric and Gas Company which was taken from their PBR, amounting to 44,000 pounds of aluminum. We got Toledo Edison in the amount of 3,740 pounds reported on PBR 2013, and a second one from Toledo Edison in the amount of 11,800 aluminum pounds, which was taken from their PBR 2017. And I read from note on Item Public Service Electric and Gas statement:

"We are unable to determine whether either of these are related to the Alcoa report, because of the lack of specific details concerning the covered wire."

- Q. So that the only two-there were only two that you could actually identify?
  - A. Exact duplicate quantities.
  - Q. And that was both to the Toledo Edison?
  - A. That is correct.
- Q. And the amounts of those were—would you state that again for the record?
- A. On the first one it shows 3,740 aluminum pounds. On the second it shows 11,800 cluminum pounds.

Mr. Bergson: You may cross examine.

### [fol. 1485] Cross-examination.

## By Mr. Mahaffie:

- Q. Mr. Rolston, with respect to this last matter that Mr. Bergson examined you about, the table that had been prepared by Mr. Hemeter, and your own working connection with that, I believe you testified that you are able to identify from Mr. Hemeter's unknown category two jobs which were definitely obtained by Rome Cable Corporation?
  - A. Yes, sir.
- Q. One in the amount of 3,740 pounds and one in the amount of 11,800 pounds?
  - A. That is correct.
- Q. Now, you also testified that you had some difficulty, did you not, in matching the potential business reports with business obtained by Rome; is that correct, sir?
- A. Yes. In the ones I read off that you could not tie in directly.
- Q. Were there others in that group that you could or could not tie in directly?
  - A. None other than are shown there.
- Q. Well, what I am getting at is this: Might there not be other business in that unknown category which was lost [fol.1486] to Rome but which you could not identify from the description on the tape?
- A. I think it would be rather doubtful, for this reason. You see you at least have a customer named like Public Service Electric and Gas. Now, in order to ascertain anything therefor in the records whether or not one of these items that appeared on the, let's call it the PBR report that Mr. Hemeter prepared, you first had to go through any orders that we did receive.
  - Q. From that customer?
- A. From that customer. Well, like what happened in the case of the Public Service Electric and Gas, we did get an order of these types of products. Incidentally, you are getting orders from the Public Service Electric and Gas but we could not tie in the dates for them specifically. In other words, you would have a lost business report, say as of March. Well, you might have items coming in, orders coming

into us the following June, and that is what we meant. I would say that the changes are pretty slim.

[fol. 1487] Q. But it is possible?

A. It could be possible.

Q. This is due to the fact that the description of the business in the Hemeter table simply was not adequate for you to determine whether it is business that you got?

A. Actual time and date and everything else. That's right.

Q. I see. Now, Mr. Rolston, with respect to conduit. It is correct, is it not, sir, that following the merger of Alcoa and Rome aluminum conduit was manufactured at the Torrance plant of Rome?

A. The finishing operations were yes. It was manufactured at the Torrance plant. Threading and coupling.

Q. Am I also correct, sir, that that aluminum conduit was, again following the acquisition—am I correct that that aluminum conduit was shipped from the Torrance plant to consumers within the so-called eleven western states area?

A. Not necessarily to the eleven, but west coast consumers, yes. That was the area we would service out of Torrance.

[fol. 1488] Q. And the remainder of the United States was serviced from what point, sir?

A. Lafayette is the other manufacturing point.

Q. So then Alcoa-Rome had two manufacturing plants for conduit; one at Lafayette which is in Indiana?

A. That's right, Lafayette, Indiana.

Q. And one at Torrance?

A. That's right.

Q. And the Torrance plant served the western area; the Lafayette plant served the balance of the country?

A. That's correct.

Q. Now, where is the line drawn between the areas served by the Torrance plant and the area served by the Lafayette plant?

A. Well, actually for every transaction you couldn't define it as much as a line drawn. You have got cases that the job was solid carloads, you could well ship it from Lafayette, we'll say, on to the eastern portion. There wasn't any sharp line of demarcation, but I would say most transactions were in that area, let's call it, from the—as Mr. Koger described

[fol. 1489] it—Continental Divide in the west was serviced from Torrance, California.

Q. The area sometimes referred to as the eleven western states was served from Torrance. The rest of the country from Lafayette.

A. Yes, that's right.

The Court: Read that question.

(Last question was read by the reporter.)

Q. Is that correct, sir?

A. I'd say that is essentially correct.

The Court: I thought you said a minute ago there was

fourteen states served from the Torrance plant.

The Witness: Well, that was specifically on steel conduit, your Honor. The distribution of the aluminum conduit was essentially-wasn't exactly eleven states, but we serviced what we call the western areas on aluminum conduit out of Torrance, and we serviced the rest of the country-now that's the point. I say you couldn't say every shipment, because if you happened to have some steel conduit—take for example you had some going to Colorado, which is not one [fol. 1490] of the so-called eleven western states, in which they wanted a half carload of steel conduit and half a carload of aluminum conduit. In that case, on these combined cars it would come from Torrance. So if we went over every -let's take literally every shipping transaction made over the last two years, therepisn't any question but what you would vary from a strict limitation of eleven states in that type of thing. It is a combination situation in many cases where the tools-just how many shipments in a period of time in that case I don't know.

Q. These were exceptions to the rule, were they not?

A. If more load quantities were wanted in two materials.

Q. Mr. Rolston, you testified that prior to the merger Rome attempted to ascertain its market share in its steel conduit sales and that it attempted to do it on the basis of the eleven western states.

A: No, I don't think I testified that.

[fol. 1491] Q. I'm sorry, sir.

A. We have always attempted to determine our market

share in every state. We used in I think one case or two at the most an eleven-state figure because of the fact that the Electrical West Magazine put out an estimate on their part of the market for—I forget what year it was—1957—and we simply said that—we went back and checked our sales against the projection made by Electrical West by our studies, and always attempted to in every way to find out what percent, but the difficulty has been and still is that there are no well established—let's call it market area statistics any place in the country.

Q. Well, Mr. Rolston, what would you estimate would be Rome's percentage of the eleven western state area of the steel conduit sold in that eleven western state area as of the

last time you tried to make an estimate?

A. My recollection is that the last figures were in the neighborhood of 16 or 17 percent. That's my recollection.

Q. As of approximately what date, sir?

A. Oh, I think it is about four years. My gues would be [fol. 1492] it was 1957 or '58.

Q. Now, do you have in front of you a copy of AR-40, document marked as AR-40?

A. Yes, I do

- Q. Would you just explain to me, sir, with respect to just one example. Would you explain how you determined that Item 2 and Item 6 were alternates?
- A. Yes. I looked at No. 2 and they specified a 4/0 copper conductor which was to be twisted with a copper weld messenger with what we call a binding strap which is a preassembled aerial cable. Then I went down to an item which turned out to be No. 6 which is the full aluminum alternate. In other words, the 336 aluminum is an alternate size for equal resistance to 4/0 copper.

Q. I see.

A. And then I did the same thing on the 4 and 9. It was done by taking the equivalent aluminum size.

Q. I understand. Now, with respect to the documents which were marked as AR-34 through AR-40, all of which you testified about on your direct examination, would you state the type of product, if there is one common type to all [fol. 1493] of these products, which is involved here.

A. There isn't. I mean—the fact that—I can go over them individually, but you will find that if you are speaking

of principally the group of the Public Service Electric Gas, I think those are two commons.

Q. Well, there are some from Boston.

A. I can do that-

Q. I don't want you to.

A. Basically the Public Service Electric Gas, which I think are five of those numbers, if you notice at the top they specify a specification number. For example, if you take Exhibit 38 you notice under the third line it says "To our specification 14-2 aluminum and 22-4 for copper. And that is a specification that is probably, oh, ten or a dozen pages or maybe not that much.

[fol. 1494] Q. Yes, I understand that. Let me ask you this way, Mr. Rolston. You described, in the case of two or three of these documents, you described it as pre-assembled aerial

cable?

A. That's right.

Q. I ask you now if that is not true in the case of all these documents, that the product under consideration be pre-assembled aerial cable?

A. No. My recollection is in one of the Public Service order twisted cable and not a cable bound to the messenger. I think I identified that—

Q. Could you identify that for me, sir?

A. I believe so. Now, after I reviewed them all, all the specifications are of the description of what we call preassembled aerial cable.

Q. Now, that is pretty high voltage cable?

A. Not necessarily. In fact, in their products they buy it at the 600 volt or 15 k.v. It is the design rather than the voltage factor.

Q. Are the products which are covered by these documents, wherever I am able to find a voltage specification on here, I see one for 4 k.v., that is 4,000 volts?

A. That's right.

Q. There is another one of 5,000 volts?

[fol. 1495] A. Yes. I think there is one here of 600 volts. Let's see a minute. I can tell by the insulation thickness which is, which. Yes, for instance, AR-37 is 600 volts. Regular 600 volt insulation.

Q. 600 volt pre-assembled aerial cable?

A. That's right. And these other products, they buy

what they call secondary cable of this type for less than 600 volts. And then they have a 4 k.v. and some 5 k.v. and in some cases, I think there is another represented here at some 15 k.v.

Q. None of these exhibits, AR-34 through 40 deal with weatherproof wire?

A. No, there is no weatherproof wire in here.

Q. They all deal with the product which you referred to as pre-assembled aerial cable?

A. That is correct.

Q. Now, Mr. Rolston, you testified that several products could be used for a service drop function?

A. Yes.

Q. And Mr. Bergson also asked you which were the most prevalent. You said that the triplex construction and the single conductor or open wire construction were the most prevalent. Of those two, which today, is the most prevalent in new construction?

[fol. 1496] A. I think the multiplex construction.

Q. Now, going back to Government's Exhibits 134, 135 and 185, which Mr. Bergson discussed with you, they are, to save you time, they are the documents dealing with the Knoxville Utilities Board, Tennessee Valley Authority, what products did you have in mind selling to the Knoxville Utilities Board, if you became an approved supplier?

A. The distribution products which could be either alumi-

num, line wire, aluminum line wire or-

Q. ACSR?

A. Yes, in distribution sizes.

Q. You had in mind if you could obtain this TVA approval you would be able to sell ACSR and bare aluminum cable in distribution sizes?

A. I would say it differently. We would have had the.

opportunity to quote on it.

Q. Yes. You had not been attempting to sell these products to fill out carloads, would you say? In other words, you were really attempting to sell these and make some money?

A. You could on occasion if the Knoxville Board has public bidding. If they came up with an inquiry in which we would say there is a total of 30,000 pounds and you have 15,000, say, of line wire and 15,000 T/O ACSR, and we chose

[fol. 1497] to bid on that basis, we would use it there. And, I think there are some cases where that would happen.

Q. But you also have in mind that you might sell these products to some utilities other than the Knoxville Utilities

Board, in the same area?

A. I think we have quoted—you got Memphis, you got several of those operations down there, which we have quoted on. This is the only one that I happen to know of that ties in there with the approvals that the TVA approves.

Q. Well, you testified that prior to the acquisition you handled or sold ACSR. I don't recall whether you described it as an accommodation item or not. I don't think you did, but I think you said, and correct me, if I am wrong, that you sold it to fill me and all the fill me and the fi

that you sold it to fill up carload lots?

A. I would say that was the primary reason. There would be other cases—I wouldn't call it, I never considered the sale as accommodation sale. Some would want two thousand of distribution sizes and two thousand pounds of line wire and we might just choose to sell it to them.

Q. But not as any sort of accommodation item?

[fol. 1408] A. I don't class it strictly as accommodation,

no.

Q. In the aluminum wire and cable field, generally, you listed various competitors?

A. Yes.

Q. And I believe you were talking as of the present date, were you not, when Mr. Bergson asked you to list competitors in aluminum wire and cable?

A. I would say so, in aluminum, particularly.

Q. Now, Mr. Rolston, you listed—I have to correct myself, I think you were talking in terms of 1958?

A. Yes, as far as I am concerned in aluminum there was

no change.

Q. You listed Alcoa, Kaiser, Reynolds, General Cable, Anaconda, Nehring, Central, Southern Electric-Olin, and Southwire. Now, can you add any to that list or does that substantially represent your competition?

A. I would just as soon list them all. At any given time

they are all competition.

Q. What I am talking about, is there any special competitors who are not on that list in aluminum wire and cable?

A. Yes, Essex Wire. Did I have that in the original go-

[fol. 1499] Q. No, sir, I don't have it in my notes.

A. I would say that represents the majority of them.

Mr. Mahaffie: No further questions.

Redirect examination.

# By Mr. Bergson:

Q. I have just a few on redirect. I would like to clear up any confusion on this potential business report.

Mr. Rolston, I show you this letter to me again and ask you to identify the business listed on the potential business reports that you were able to establish that you got and that you got and was considered lost by Alcoa?

A. Toledo Edison.

Q. How many pounds of aluminum?

A. 3,740 pounds of aluminum.

Q. What is the next one?

A. The next one is an order from Long Island Lighting Company in the amount of 1,519 pounds of aluminum.

Q. And the next one?

A. And the third one is Toledo Edison in the amount of

11,800 pounds of aluminum.

Q. Now, Mr. Mahaffie talked to you about aluminum [fol. 1500] conduit manufactured at the Torrance Plant. What work is performed in the manufacture of aluminum conduit at the Torrance Plant?

A. The application of threads on each end of the aluminum pipe. The application of coupling on one end and thread on the other and the necessary lubricant.

Q. So when you get the aluminum pipe and you put

threads on the end and a cap on the end?

A. That's right.

Q. And in threading the aluminum pipe did you use the same application that you used in threading steel pipe conduit at Torrance?

A. I am not a manufacturing man. I believe—maybe they changed type of threads. I couldn't answer whether it is the identical equipment.

Q. But the manufacturing consisted of threading?

A. Yes, they might have had to change the coating or oil or something, as far as I know it was the identical threading machine which we had:

Mr. Bergson: All right. Thank you.

Mr. Mahaffie: Just one question, Mr. Rolston. At that Torrance operation today, if you know, where does the aluminum pipe come from which is threaded? [fol. 1501] The Witness: It comes from the Vernon Plant of the Aluminum Company of America.

Mr. Mahaffie: It is produced there?

The Witness: It is produced there. That's right.

Mr. Mahaffie: No further questions.

(Witness excused.)

Mr. Bergson: Mr. Healy.

JOSEPH L. HEALY, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Mr. Bergson: Your Honor, I know you have been waiting for these. These are statistical charts. Some I will put through Mr. Healy and some through a Mr. Day, a subsequent witness.

Direct examination.

## By Mr. Bergson:

Q. Mr. Healy, will you please state your name and address for the record?

A. Joseph L. Healy, 992 Homer Avenue, Pittsburgh, Pennsylvania.

Q. By whom are you employed?

A. Aluminum Company of America.

[fol. 1502] Q. In what capacity?

A. Senior accountant.

Q. How long have you been employed by the Aluminum Company of America?

A. Twenty-four years.

Q. And how long have you been employed in your capacity as senior accountant?

A. About seven years.

- Q. And prior to that were you also in the accounting. department?
  - A. Yes, sir, as chief cost accountant, Vancouver works.
- Q. Mr. Healy, in the course of preparing to defend this lawsuit brought by the government against the Aluminum Company and Rome Cable Corporation did you at my request prepare certain charts?

A. Yes, sir.

Q. And were these charts prepared by you personally or under your direction and supervision?

A. Under my direction and supervision.

Q. Now, I invite your attention to Defendant's Exhibit AR-7 for identification which is the first chart in this book and which is entitled "Primary aluminum capacity production and supply." This chart was prepared under your [fol. 1503] direct supervision?

A. Yes, sir.

- Q. Will you state in terms of Alcoa's percentage of United States capacity, of primary aluminum capacity, Alcoa's percentage in the year 1948 as indicated on that chart.
- A. Alcoa's percentage of primary aluminum capacity in . the United States was 50 percent in the year 1948.
- . Q. Between 1948 and 1957, Alcoa's capacity ranged between what figures?

A. Between 50 percent and 43 percent.

Q. And what was Alcoa's percentage of primary aluminum capacity in 1960?

A. 35 percent.

Q. When we talk about primary aluminum capacity, are we talking about domestic primary aluminum capacity?

A. Yes.

Q. Now the next column I notice headed "Primary aluminum production."

Mr. Bergson: Your Honor, counsel for the government would prefer to have me offer these before I examine the witness about them, and I have no objection to doing so.

[fol. 1504] I offer Defendant's Exhibit AR-7 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-7 for identification received in evidence.)

Q. Will you state what the chart shows to be Alcoa's percentage of primary aluminum production in 1948?

A. In 1948 it was 52 percent.

Q. And in 1960 it was how much?

A. 36 percent.

Q. Now, there is another column entitled "United States primary aluminum supply." How does this differ from primary aluminum production?

A. It differs in that the imports of crude aluminum are

included. That is, imports in the United States.

Q. In 1948 Alcoa's percentage of such supply was—?

A. 46 percent.

Q. And in 1960? A. 34 percent.

[fol. 1505] Q. Now, I invite your attention-

-

The Court: Are you going to leave that?

Mr. Bergson: Yes, sir.

The Court: What does the column in your primary aluminum capacity and primary aluminum production—what does the Canada column mean?

The Witness: That represents the primary aluminum capacity and production respectively in Canada for all the Canadian companies that are involved.

The Court: All right.

Q. But the percentage is percentage of domestic product?

A. That's right.

The Court: That figure is not included when you determine the percentage for instance of Alcoa's percentage of United States in 1960. 35 percent. That Canadian figure is not included.

The Witness: That's right.

Mr. Bergson: And if the Canadian figure were included, Alcoa's percentage would be substantially ass.

[fol. 1506] The Witness: Yes, that's right.

The Court: Just one more question. In the last table, it refers to aluminum supply. You have a column, "United States imports, crude aluminum." Does that include imports from foreign countries and Canada?

The Witness: Yes, it includes Canada as well as any

other foreign country.

The Court: In other words, it is everything except domestic.

The Witness: Yes.

Mr. Bergson: But of crude aluminum. This is not any of this semi-finished or finished product.

The Witness: That's right.

The Court: All right. I guess I understand.

#### OFFERS IN EVIDENCE

# By Mr. Bergson:

Q. Now I invite your attention to Defendant's Exhibit AR-43 for identification and ask you whether that chart was prepared under your direction and supervision. [fol. 1507] A. Yes, it was.

Mr. Bergson: I offer Defendant's Exhibit AR-43 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-43 for identification received in evidence.)

Q. Now, Mr. Healy, will you please explain to the Court

what this chart portrays.

A. This chart shows for the United States in total and for Alcoa's portion the unused primary aluminum capacity. It shows that in the year 1948, four percent of the total United States primary aluminum capacity was unused. It shows in the year 1960 that 18 percent of the United States primary aluminum capacity was unused. For Alcoa in 1948 it shows that Alcoa's entire capacity was used, and in 1960 that Alcoa's unused capacity was 15 percent of its total primary aluminum capacity.

Q. What do you mean by unused capacity?

A. That refers to primary smelting capacity that is not

operating. Regers to idle pot lines.

Q. So that if there were a demand for more aluminum, [fol. 1508] this capacity which was unused could be used?

A. Yes.

Q. Now, I notice here you have some figures in paren-

theses. Would you explain what that means?

A. Alcoa's capacity was defined for certain periods on a basis which included consideration of power availability. In certain years the amount of power generated, due to better than medium water conditions on which the capacity had originally been calculated resulted in production in excess of the capacity that had been calculated. In other words, capacity based on average water conditions—capacity was based on average water conditions. As the rainfall was exceptionally heavy, more power would be generated and more aluminum produced.

Q. Now, directing your attention to Defendant's Exhibit AR-44 for identification, I ask whether that graph was prepared under your direction and supervision.

A. Yes, it was.

Mr. Bergson: I offer Defendant's Exhibit AR-44 for identification.

Mr. Melchior: The government objects to this tabulation, [fol. 1509] your Honor. It is not clear to us the relationship existing between the graph and the worksheet which accompanies it. As you notice, it is in two parts, and it is impossible to tell from the legend which indicates sales to domestic non-integrated companies in light grey—it is impossible for us to tell how that area was determined, from looking at the worksheet. Secondly, there is indicated on the worksheet that certain pig and ingot sales were made to Alcoa International, Inc. I am not sure, but I believe this concern is probably an affiliate of defendant, and it is not clear from the tabulation where that may be included in the graph. Whether it is included in the domestic non-integrated part or the part used by Alcoa, and the reason for the separation.

Mr. Bergson: Well, if you will let me follow the procedures I was following before, when you asked me to offer the exhibit in evidence, maybe I can clear this up.

[fol. 1510] Mr. Melchior: We wanted to express our objection before—

The Courts All right, I will let you go ahead and explain

the chart.

# By Mr. Bergson:

Q. Now, Mr. Healy, would you please explain how this

chart was prepared.

A. Yes, sir. The dotted line which in the legend is captioned "Capacity" was plotted on the basis of the Alcoa primary aluminum capacity figures in the chart we were discussing a few moments ago.

Q. That is Defendant's Exhibit AR-47, the first chart.

A. That's right.

The solid black line which is captioned "Production" was plotted from Alcoa's primary aluminum production figures also from Chart AR-7. The light shaded area which is captioned "Sales to domestic non-integrated companies" is plotted in part from Exhibit AR-46. That chart covers the years 1947 through 1955. The information was updated. It is not shown in these tables. It was updated from 1956 through 1960.

[fol. 1511] Q. And these figures were updated from company records, were they?

A. That's right, sir.

Mr. Bergson: We have a stipulation with the government, your Honor, that figures obtained from company records will be satisfactory, unless the opposing party challenges it, and the government's objections to this chart did not challenge those figures.

Mr. Melchior: The government had no way of knowing where these figures came from until the witness stated it just now.

The Court: Go on with the lawsuit.

A. The dark shaded area which is captioned "Used by Alcoa" shows the total amount of Alcoa's primary aluminum production which it used itself in its own operations. The figures from which this chart was plotted appear on the worksheet which accompanies the chart. And they are the figures captioned "Alcoa primary aluminum used by

Alcoa" and the various other figures here show the basis of the calculation.

[fol. 1512] The Court: So that the sales to Alcoa International are included in the graph representing primary production!

The Witness: No sir.

The Court: Where are they used?

The Witness: The sales shown here to Alcoa International are export sales and they are therefore excluded from this graph. For example the light shaded area represents sales to domestic non-integrated companies. Therefore these export sales are excluded from that caption by definition. Likewise this metal was not used by Alcoa. It was exported. Therefore it is excluded from that section.

The Court: I see.

## By Mr. Bergson:

Q Now, Mr. Healy the difference between the dark shaded area and the solid line represents Alcoa production—what Alcoa production?

A. The space between the dark shaded area and the solid line represents Alcoa production that was sold to non-integrated companies plus Alcoa production that was shipped, exported, sold overseas plus Alcoa production which was shipped to the U. S. stockpile.

Q. And Alcoa production that may have been retained in [fol. 1513] inventory?

A. That is correct. Also any incidental sales that may have been made to other primary producers which may have been of inconsequential amount.

Q. Now on this chart, taking the dotted line at the top from the year 1956 on, the difference between the very black and the dotted line represents what?

A. The difference between the black portion of the chart!

Q. Yes.

A. And the dotted line represents the categories which I just mentioned, which are sales to non-integrated companies, export sales, shipments to government stockpile, additions to inventories plus idle capacity that is available and would be brought to use if the demand were there.

Mr. Bergson: I don't know whether—I offered this but I don't know whether it has been received in evidence.

The Court: No, it has not been.

Mr. Bergson: I re-offer it at his time.

The Court: All right. Let's see what objection counsel has.

Mr. Melchior: The government renews its objection, Your Honor, because the graph is obviously—on its face does [fol. 1514] not indicate precisely what the witness has said. I think the graph needs re-drafting to make clear what it says. The graph draws information not only from the work sheet which is attached to it but from several other exhibits, and they are not indicated on there at all. Now we don't challenge the accuracy of the information but we didn't have an opportunity to check it. We don't know where the information came from. I think this chart can be reconstructed. I don't think it is a valid chart at the present time. It needs re-drafting.

Mr. Bergson: I think the chart is perfectly valid, Your Honor. I think the witness' explanation makes it quite clear. I think it is entirely competent. I think the objections

tion is unwarranted. .

The Court: Well certainly I couldn't explain it without at least going back over the witness' testimony. I don't know that there is anything wrong with the graph, as I understand it, in what it shows. In other words the broken line shows the increase or decreases in capacity over this [fol. 1515] period. Now there is nothing wrong with that, is there, Mr. Melchior?

Mr. Melchior: Probably not. We don't know, Your Honor. I assume that the arithmetic is worked correctly.

The Court: He says it is taken right from AR-7. I don't see any particular objection. I don't know whether it is worked right either. But that is the way he has worked it. He is the accountant and I suppose he can draw this graph better than I. And I can understand that.

The next one is the solid line that is taken from AR-7

also; isn't that right, Mr. Healy?

The Witness: Yes it is

The Court: And you say it is correctly plotted on this graph?

The Witness: Yes it is.

The Court: All right. I don't see anything to be done with the chart as to those two. Now the next one is sales to domestic non-integrated companies. You say that is taken at least in part from another graph, from another chart to be offered later on?

The Witness: AR-46.

[fol. 1516] The Court: AR-46.

Mr. Melchior: Which is not yet in evidence.

The Court: Which is not yet in evidence. Perhaps technically this should be withheld until we establish that AR-46 is correct.

Mr. Bergson: AR-46, Your Honor, is a chart that was taken from Judge Cashin's opinion in the Alcoa case based on a stipulation between the government and Alcoa.

The Court: Well the stipulation may be all right. But I wouldn't say anything about my brother, Judge Cashin.

Mr. Bergson: It was a good opinion.

The Court: Well so I imagine. So that objection so far as 46 is concerned is perhaps theoretically more than practical.

Mr. Melchior: Perhaps, Your Honor.

The Court: Especially if there is a stipulation about it.

Mr. Melchior: Your Honor I am also informed that AR-46—do you have that before you—only goes up to the date—only goes up to the first nine months of '56.

[fol. 1517] The Court: That's right.

Mr. Melchior: And this purports to go up to 1960.

The Court: Yes. But the witness says it came in part from this. Now I am trying to find out where the rest of it came from.

Mr. Melchior: All right.

The Court: Where did the rest of this graph showing the sales to domestic non-integrated companies come from, Mr. Healy?

The Witness: I do not believe that that shows anything in these exhibits. The information was up-dated but it is not a part of this booklet.

Mr. Bergson: It came from company records. The Witness: It came from company records.

The Court: So that the foundation-

Mr. Bergson: We have the stipulation on this, Your Honor.

The Court: Oh! Have you a stipulation on this?

Mr. Melchior: You don't have to produce the stipulation. We agreed that we would not go behind company [fol. 1518] records produced or which could be made available to us unless we questioned the matter.

Mr. Bergson: Do you question the accuracy of this?

Mr. Melchior: I am not questioning the accuracy of this because I don't have the basis for questioning the accuracy. But I do question the matter of presenting it. I don't think it is complete.

The Court: We are by two of them. Two I think are all

right.

Mr. Melchior: Yes.

The Court: Now this is the third one. Now what are we lacking in the third one—that is the light gray color? What are we lacking in that to make it complete?

Mr. Melchior: Well we would like to know what company records at least were utilized and we have no way of

knowing.

The Court: Well that could probably be made available, couldn't it?

Mr. Bergson: Your Honor, this is going back into the books and ledgers of the company and this is what we tried [fol. 1519] to avoid in entering into this stipulation.

Mr. Melchior: I think you merely have to set off the annual totals. That is all. So we can see the figures. We have no way of taking off totals even. I am not asking you to go back and get individual sales. If you give us annual totals we can check and see that the graph was made correctly.

I am having a difficult time trying to determine what percentage the light shaded area is of the whole shaded area. You see it on a slant or on a bias. You might ask the witness if he has computed that, what percentage is the light shaded area in the year 1960, how does it compare with the dark shaded area—what percentage of the whole.

Mr. Bergson: He has not computed it, I am sure. I have not asked him to compute it: This chart is being used to show in the entire framework of the Alcoa primary aluminum production the absolute amounts that were used in Alcoa's primary—used in Alcoa's non-fabrication which were used in sales to non-integrated producers, which are

[fol. 1520] represented in expansion sales or sales to stockpile, or aluminum in inventory and also to show capacity. Now the capacity figures, the production figures are in a chart to which you didn't object. The sales to nonintegraters are in a chart which was stipulated to by the government in the 1957 litigation. It was up-dated by recourse to company records. And the total used by Alcoa is set forth, and the manner in which that was obtained is set forth in the work sheet.

Mr. Melchior: Now can you tell counsel by looking at this representation here first who these non-integrating companies are that sales were made to? Do we have any way of knowing who they are or who you identify them as? And secondly, do we have any way of knowing—

Mr. Bergson: I am not offering it to show who they were

made to.

Mr. Melchior: But it shows something like this, counsel. You have offered it for one purpose but it might show other things that we have an interest in. And there is no [fol. 1521] designation as to who these non-integrated companies are.

Mr. Bergson: They are every producer of aluminum product who bought aluminum from Alcoa, and they could be hundreds of thousands of them. Have you ever tried

to make a list on them? It would be impossible.

The Court: I guess I don't understand it so this will be a good time for me to adjourn. Recess until ten o'clock tomorrow morning.

The Clerk: Court is in recess until ten o'clock tomorrow

morning.

(Whereupon at 5.05 p.m. o'clock an adjournment was taken to Wednesday, February 21st, 1962, at 10 o'clock a.m.)

[fols. 1522-1523] [Title omitted]

Transcript of hearing—February 21, 1962

[fol. 1524] The Court: All right.

Mr. Bergson: May it please the Court, with the Court's permission, we would like to interrupt Mr. Healy's testimony to put on some utility witnesses and another short witness before we resume with Mr. Healy.

The Court: All right.

Mr. Latimer: Mr. Brandow.

CHARLES A. BRANDOW, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

### By Mr. Latimer:

Q. Mr. Brandow, would you state your full name and your address?

A. Charles A. Brandow, Assistant Purchasing Agent of the New York State Electric and Gas Corporation.

The Court: A little louder, Mr. Brandow.

Assistant Purchasing Agent of the New York State

The Witness: New York State Electric and Gas Corporation.

- Q. Does your present position encompass the responsibility for buying wire and cable products?

  [fol. 1525] A. Yes, it does.
- Q. And how long have you been responsible for the purchase of wire and cable products?

A. Oh, something more than 15 years.

Q. Would you state the approximate area of New York State which your company covers?

A. About 17,000 square miles. This is about 35 per cent of the area of the State.

Q. Would you estate the number of electric customers your company has, approximately?

A. About 470,000.

Q. Mr. Brandow, directing your attention to the covered overhead products which are represented on the board hehind you, would you state who your regular suppliers of these products were prior to April 1, 1959?

A. The Anaconda Wire and Cable Company, the Aluminum Company of America, Rome Cable Corporation, and

General Cable Corporation.

Q. Now, turning to the bare overhead products, was Rome Cable much of a factor?

A. No, they were not. It seemed to be that they were not particularly interested in that business. [fol. 1526] Q. Turning now to the so-called service drop,

what does your company use for service drop?

A. We use open wiring.

Q. And by open wire-

A. It is three individual covered wires from the pole to the customer's home.

Q. You use that at the present time?

A. That's right.

Q. And do you expect any change in that?

A. No.

Q. Would you state on what basis you purchased the covered overhead products?

A. We buy it on the basis of quotations, which are received from our regular suppliers and we buy rather regularly, although at no stated intervals.

Q. Now, on occasion, does one of your regular suppliers

offer a discount on their products?

A. Yes.

Q. Now, prior to April, 1959, do you recall whether Rome ever offered a discount on these products?

A. I can't recall that they ever were the first to offer a

discount.

Q. Who of the suppliers generally would?

A. Anaconda or possibly Alcoa.

[fol. 1527] Q. And then the others would follow?

A. That's right.

Q. Now do other suppliers, both prior to the merger and since, had other suppliers solicited your company for covered overhead business?

A. Yes. We have solicitations from people who do not supply us now. Reynolds, Olin Conductors, Kaiser. Those,

are some.

Q. Would those be satisfactory suppliers, if you choose to do business with them?

A. That's right.

Q. Mr. Brandow, why do you limit your group of sup-

pliers on the product we have been talking about?

A. Well, first of all, we feel that we should have more than one supplier for a product as important as this. And then, secondly, we feel that we, if we limited our purchase to a few suppliers, we will be an important enough customer of theirs so that if we want some special consideration, some quick delivery or maybe some engineering advice, we would feel free to obtain it from them than if we were not too good a customer we would be a little bit reluctant to ask them.

The Court: And they would probably be reluctant to give [fol. 1528] it to you.

The Witness: I think that's right.

Q. Has there been any change in your supplier group on the covered overhead product since the Alcoa-Rome merger!

A. No.

Q. Mr. Brandow, does the fact that Alcoa, since the acquisition, can now offer a broader line of wire cable products in addition to the ones they were making beforehas that helped them on their sales to you of the covered overhead product?

A. No.

Q. And the Alcoa-Rome merger, tell us, has that had any adverse effect on you as a purchaser of overhead wire and cable products?

A. No, I can't say that it has.

Q. Do you expect that it will have in the future?

A. Well, it's pretty hard to look into the future, but as of now I can't see any reason why it should.

Q. Thank you.

#### Cross-Examination.

### By Mr. Mahaffie:

Q. Mr. Brandow, are you an engineer?

A. No.

[fol. 1529] Q. Who within the company determines the type of product, or type of conductor which will be used in a particular application?

A. It would be our engineering people, with whatever advice they might need from our management people. En-

gineers would have the main say, of course.

Q. So any determination as to whether open wire or let's say triplex would be used for service drops would be made by your engineering staff?

A. That's right.

Q. Now, I believe you testified that your suppliers of covered overhead conductor products today are Anaconda, Alcoa and General Cable; is that correct?

A. That's correct.

Q. Rome was a supplier prior to its acquisition by Alcoa?

A. That's right.

Q. You also testified that you liked to have more than one supplier, is that correct?

A. That's right.

Q. Would you state why?

A. Well, it's always possible that one supplier might be affected by a strike or a fire or some Act of God, or some other reason why they would be out of the product and if [fol. 1530] we were tied with them alone, we might find it difficult to get deliveries.

Q. All right, sir. Other than the fact that Rome was a supplier in 1958 and supplier, have there been any other changes in your list of regular suppliers

since, let's say, 1957?

A. No.

Q. Have you ever solicited a bid from anyone other than

those three companies?

A. In the case of large amounts of wire, most of which are bare wires and used for transmission purposes, we have solicited bids from Kaiser and Reynolds, as well, and in those bids there may have been some amount of covered wire, more or less as an accessory to the bare wire.

Q. So your limitation to this group of three today is applicable in the case of relatively small orders?

A. That's right.

Q. In large orders, you will spread out and solicit business from others?

A. That's right.

Q. Now, have you ever received a bid from any company other than this group of three which was lower than the [fol. 1531] bids furnished by the three regular suppliers?

A. No.

- Q. Is that true in the case of both bare transmission and bare and covered distribution cable?
- A. As far as I can recall, that is so, yes, because we have a policy of accepting the lowest bid.
- Q. So if you had received a lower bid, let's say, from Kaiser Company, you would have accepted it?

A. That's right.

Q. Do your regular suppliers, that is, Anaconda, Alcoa and the General Cable compete with other suppliers in the sale of wire and cable? That is, speaking generally.

A. Well, they definitely are in competition. I don't know

that I quite understand your question.

Q. Well, I'm sorry. They are in competition, are they not, with Kaiser, Reynolds, and a few others, in sales of wire and cable throughout the country?

A. I believe so, yes.

- Q. Do your regular suppliers generally charge lower prices than the other suppliers that would be available to you!
- A. I don't know that they are any lower. They would [fol. 1532] be as low as others, I am sure.

Q. Would they be any higher?

A. I would say not.

- Q. So their prices would be about the same as the-
- A. I think that would generally be the case, yes.
- Q. So would it be correct, then, that even though your supply situation is limited to a group of three today, in a general way you receive the benefit of the price competition that does exist among all suppliers of these products?

A. I should think so, yes.

Q. Thank you.

#### Redirect examination.

## By Mr. Latimer:

Q. Mr. Brandow, on the so-called small orders you mentioned on both your direct and cross-examination, in connection with the covered products, do you buy covered overhead products any other way!

A. Very seldom.

Q. So this would be the major-

A. That's right. Q. Thank you.

The Court: Just one question, Mr. Brandow. I notice you say that you use open wire for service drop. That is [fol. 1533] a present method, of present merchandise used for that purpose?

The Witness: Yes.

The Court: How long have you used open wire for service

drop! Is it a matter of years!

The Witness: Yes, oh, I think that's probably almost the only method that we have used. Now, we have on occasion, used a very limited amount of triplex, but our engineers have ruled against it.

The Court: Where is your territory, or the territory of

your company?

The Witness: The major part of it is in what I believe you might call South Central New York. It's around Binghamton, Elmira, Geneva, Auburn, Oneonta, although we do have properties down in Dutchess County and we have others within nine miles of Buffalo.

The Court: Has there been any expansion of your system

in the last two or three years?

I assume it is expanding all the time to some degree, but what I mean is any notable expansion of your system. [föl. 1538a] The Witness: I would say that we have grown at about the same rate as all the other utility companies. There has been expansion. It has been reasonably steady. And I'm not sure, I would say perhaps 10 per cent a year; something of that sort.

[fol. 1534] The Court: Is there any particular type of open wire that you use for service drop?

The Witness: We use nothing smaller than No. 2 alu-

minum and that is probably the most popular. No. 2 covered aluminum. If you want the technical name, it is ECH 26.

The Court: All right.

(Witness excused.)

Mr. Adler: Mr. Coleman.

James J. Coleman, called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Adler:

Q. Will you state your name and position?

A. James J. Coleman, supervising buyer of Public Service Electric Gas and Power Company of Newark, New Jersey.

Q. Will you describe briefly the area served by your

company?

A. Well, they call it the corridor, from Jersey City to [fol. 1535] Camden. It covers about 80 percent of the territory and 2200 square miles.

Q. In your position do you have responsibility for the

purchase of electric wire and cable?

A. All electric wire, specification wire and cables is under

my jurisdiction.

Q. Do you use in your system a triplex service drop cable such as shown at the bottom of that board which has been introduced, a photographic copy of which has been put in evidence here as Defendant's Exhibit AR-20?

A. It is similar to that. Two insulated conductors with

one bare.

Q. Prior to April, 1959, when Alcoa acquired Rome Cable, were Alcoa and Rome large suppliers of that product?

A. Yes, they were.

Q. To your company. Now, turning to the period since the acquisition, could you state for the Court which companies have submitted bids on your service drop cable requirements for the first quarter of 1962?

A. Can I read the list that I have just so I don't miss a name?
[fol. 1536] Q. Yes.

I Reynolds, Kaiser, General Cable, Hatfield, Okonite,

General Electric, Coliyer, Olin, Rome.

Q. Do you consider this a broad enough group of bidders

for your purposes in-

A. It is. There was one name added that we were solicited in the next quarter. That is Simplex. They have just been put on the approved list. That is sufficient.

Q. That was without that addition?

A. It is comprehensive. They have been put on the list.

Q. And do you consider this an adequate group of suppliers for this product?

A. Yes, there is plenty of competition there.

Q. Now, is there any other company on your approved list which was not included in the list of bidding companies which you just read to me?

A. Well, there are others who would be acceptable if they made the wire. They are included as an acceptable manu-

facturer of rubber insulated wire and cable.

Q. Now, are you familiar with the South Wire Company? [fol. 1537] A. Yes.

Q. Are they among your acceptable suppliers?

A. No. They have not been put on the list. They have solicited, but we didn't care to add any more at this time.

Q. And are you familiar with the Central Cable Com-

pany?

A. Yes. Some years ago they had furnished us with weatherproof wire.

Q. Are they on your list of suppliers of this product?

A. Not at the moment for triplex.

Q. If you wanted an even broader group of suppliers,

might you solicit them?

A. There would have to be a visitation by our engineers in the distribution department to check their facilities and methods.

Q. You have not felt it necessary?

- A. We have not felt it necessary because we have quite good distribution now on companies.
- Q. Is it your opinion as a purchaser of this product and other products that Alcoa is in a stronger position to get

your business by virtue of having acquired the Rome Cable Company than it was previous?

[fol. 1538] A. It should be, yes.

Q. They have gotten a larger portion of this business?

A. No, they have not.

Q. Is it your opinion as a purchaser of wire and cable products that Alcoa's acquisition of the Rome Company has had any adverse effect on your position?

A. Not at all.

Mr. Adler: No further questions.

The Court: Cross-examine.

#### Cross-examination.

## By Mr. Melchior:

Q. Mr. Coleman, do you buy quite a bit of triplex cable?
A. I would say about ten million feet a year, assorted sizes at least.

Q. What do you use it for?

A. For service to customers, from the pole to the house.

Q. Service drop purposes?

A. When you say service drop, we just go to the service head on the house. The owner of the residence supplies [fol. 1539] from the service head to the meter. We don't go through to the meter.

Q. You go from the pole—

A. To the service head.

Q. -to the service head?

A. That's right.

Q. I see. Do you use triplex for any other purpose?

· A: You mean three-conductor twisted cable?

Q. Yes. The kind of cable that was pointed out to you.

A. Not for service cable. That is another construction It is not service cable.

Q. I asked if you used it for any other purpose,

A. We don't use service cable for any other purpose.

The Court: Do you use triplex or multiplex?

The Witness: There is a three-conductor twisted cable which is used for secondary distribution. It is a different type of cable.

The Court: I think that is what counsel is trying to get [fol: 1540] from you.

The Witness: It is distribution rather than service cable.

Q. How much do you say you purchase on an annual basis of triplex?

A. Upwards of ten million feet.

Q. Can you approximate what share you use for service purposes?

A. Are you still talking about this service cable?

Q. From the pole to the house.

A. Every foot of it. Q. Every foot of it?

A. The aluminum service cable, every bit of it is used for service purposes. The other is a distribution cable.

Q. If I understand your testimony, you purchase upwards, did you say ten million feet?

A. That's right.

Q. Of triplex a year.

A. In assorted sizes.

Q. In assorted sizes?

A. From No. 4 up to 2/0.

Q. Now, what part of that do you use for service pur-[fol. 1541] poses?

A. All of it is used for service. It is a service cable.

Q. What part do you use for secondary distribution?

A. That is a different type specification.

Q. A different type entirely?

A. That's right. It is a three-conductor type, but a different construction.

Q. Now, I note that in 1962 you listed quite a large number of suppliers.

A. Correct.

Q. Why do you have such a large list of suppliers and

-bidders? Any particular reason?

A. For competitive reasons and most of these companies as you know, practically the center of wire and cable manufacturers are in New Jersey.

Q. What do you mean by that?

A. Most of these are representatives of New Jersey companies.

Q. And you like to deal with New Jersey customers?



A. Not necessarily, all things being equal.

Q. Do you deal on a price basis, or service basis? [fol. 1542] A. Everything is on a competitive quotation.

Mr. Melchior: No further questions.

Mr. Latimer: No redirect.

MAURICE C. BUCKLEY, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

#### By Mr. Adler:

Q. Will you state your full name and position, please?
A. Maurice C. Buckley, director of purchasing and stores,
Long Island Lighting Company.

Q. How long have you held that position?

A. Since October, 1957.

. Q. Do your responsibilities include the purchase of wire and cable products?

A. They do.

Q. Referring to the period of time between the time when you became responsible for purchases and June of 1958, in what manner did you purchase the so-called overhead transmission and distribution products?

[fol. 1543] A. The bulk of such business was awarded to Anaconda and Alcoa, with minor participation by other

companies. .

Q. Was Rome Cable Company ever a supplier of yours of the bare cable products?

A. No.

Q. With respect to the covered overhead products, did Rome at any time—this is prior to 1958—participate in your business?

A. Yes.

Q. So that prior to June of 1958 Alcoa, Rome, Anaconda and General Cable were your suppliers of the covered overhead products?

A. They were.

Q. Were there other suppliers known to you at that time who could have supplied these products?

A. Yes.

Q. For what reason didn't you solicit bids from these other suppliers?

A. We felt that by concentrating our business with two major suppliers that we would receive better treatment

in time of emergency or critical needs.

Q. Now, in June of 1958 did you change your purchas-[fol. 1544] ing policy with respect to these overhead products we have been talking about?

A. Yes. We opened up to all the suppliers complete participation in our requirements on a competitive basis.

Q. Did you have any trouble finding additional suppliers?

A. No.

## (Defendant's Exhibit AR-81 marked for identification.)

Q. Under the policy adopted in June of 1958, how is your business placed? Could you describe a little bit more

fully how that is done?

A. Well, at intervals we estimate our requirements for a key period, whether it be six months, a year, or eighteen months, make up packages of our needs and invite competitive bids from our suppliers. The business is awarded on the basis of the lowest price submitted for each of the items.

Q. So that if one company has the lowest price on bare cable it would get that business, and if another company had the lowest price on triplex it would get that business? [fol. 1545] A. That's right.

Q. I show you now Defendant's Exhibit AR-S1 for identification and ask whether that was prepared under your

direction and supervision?

A. Yes.

Q. And would you describe for the Court what this is?

A. This is a tabulation showing the distribution of our aluminum overhead conductor business from the year 1957 through 1961, and showing the dollar amount awarded to each of our suppliers.

#### OFFER IN EVIDENCE

Mr. Adler: I offer in evidence Defendant's Exhibit AR-81 for identification.

Mr. Wertheimer: Your Honor, we would like to know

who prepared this chart. The initials are C.J.D.

The Court: He says it was prepared under his direc-

tion. That's what I understood him to testify.

Mr. Adler: That's correct. Whose initials are C.J.D.? The Witness: Charles J. Davis, manager of purchasing,

Long Island Lighting Company.

[fol. 1546] Mr. Wertheimer: I believe you testified that the title "aluminum wires" includes actually aluminum cable and any other part of aluminum requirements for overhead.

The Witness: Yes, all the overhead conductors.

Mr. Wertheimer: We have no objection.

The Court: Received.

(Defendant's Exhibit AR-81 for identification received in evidence.)

## By Mr. Adler:

Q. Now, referring to defense exhibit AR-81 and to the year 1957, would you state how your business represented on that chart was allocated?

A. Alcoa received 36 percent, Anaconda 41 percent, Kaiser 7 percent, General Cable 4 percent, Circle Wire and Cable less than one percent, Essex Wire and Cable 4 percent, Southern 4 percent, and I helps-Dodge 4 percent.

Q. Mr. Buckley, how do you reconcile the fact that Kaiser, Essex, Southern and P. D. stands for Phelps-Dodge? [fol. 1547] A. Yes.

Q. -and Phelps-Dodge received portions of your business, with your earlier testimony that prior to June of 1958 your business was divided mainly among these two or three suppliers?

A. For selected minor items, we invited the other suppliers to participate in the competitive bidding.

Q. All right. Now, turning to the year 1958, who were the three largest suppliers and what were theirA, Anaconda with 46 percent, Rome 21 percent, and

Alcoa 20 percent.

Q. Now, 1959 would be the first year, I believe, after your new policy went into effect; and did that effect the manner in which your business was distributed?

A. Yes. In that year Anaconda received 35 percent, Kaiser 25 percent, Circle 22 percent, Rome 10 percent, and

Alcoa 7 percent.

Q. Now, going to the very bottom total which is a composite of 1960 and 1961, will you describe the manner in which your business was allegated in that possed.

which your business was allocated in that period?

[fol. 1548] A. Kaiser received 46 percent, General Cable 12 percent, Essex Wire 10 percent, Olin 7 percent, Reynolds 6 percent, Alcoa 9 percent. That's Alcoa-Rome 9 percent.

Q. That is the combination of Alcoa and Rome together?

A. That's right. And Anaconda 7 percent.

Q. Is it your feeling, Mr. Buckley, that you are getting an adequate degree of competition in the purchase of these products about which we have been talking?

A. Yes.

Q. Under the method used by you in purchasing these products—currently used by you—is it any advantage to Alcoa to include in its line insulated copper products as well as the bare and covered aluminum?

A. Indications are that there is no advantage.

Q. And is it your opinion as the person responsible for purchasing overhead wire and cable products that the acquisition of Rome by Alcoa has adversely affected you?

A. No.

[fol. 1549] Cross-examination.

#### By Mr. Wertheimer:

Q. Mr. Buckley, you stated that in June of 1958 you changed your policy from concentrating your business in the hands of a relatively small number of suppliers to invite competition from all suppliers. What were your reasons for this change of policy?

A. The main reason was to seek more competitive prices

or lower prices.

Q. Could you get lower prices when you have more suppliers than when you have a few!

A. Yes.

Q. And the larger the number of suppliers the more price competition you would expect?

A. Yes.

Q. Does this chart marked as AR-81 indicate all the companies who currently make the products you are interest in buying?

A. No.

Q. If a company that presently makes these products were to satisfy your engineering and quality standards, would there be anything to prevent them from bidding on your business?

[fol. 1550] A. No.

Q. So you would take bids from anyone who wanted to sell your product who you thought was capable of supplying it?

A. Yes.

Q. And you would be interested in price, quality, service?

Q. Who else makes the products covered by this exhibit, who are not listed hereon?

A. Well, I know of one, Central, and I suppose there are others.

Q. Then this would be a pretty comprehensive list of the companies in the field?

A. Yes.

Mr. Wertheimer: That is all.

Mr. Adler: No redirect.

The Court: All right.

(Witness excused.)

Mr. Bergson: Mr. Hood,

[fol. 1551] JOHN W. HOOD, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

### By Mr. Bergson:

Q. Mr. Hood, will you please state your name and address?

A. John W. Hood, 5420 Plainfield Street, Pittsburgh, Pennsylvania.

Q. By whom are you employed?

A. Aluminum Company of America.

Q. For how long have you been employed by the Aluminum Company?

A. Continuously since 1922.

Q. What is your present position with the Aluminum Company?

A. Chief Metallurgist.

Q. How long have you held the position of chief metal-lurgist?

A. Since October, 1958.

Q. And prior to that time what was your position?

A. I was assistant chief metallurgist in charge of quality standards and specifications.

Q. What is your educational background, Mr. Hood? [fol. 1552] A. I am a graduate electro metallurgist from Lehigh University.

Q. Mr. Hood, will you describe for the Court the processes or the process by which aluminum is made from alumina. Don't go back any further than the alumina.

A. Alumina is dissolved, an electrolyte consisting primarily of cryolite and through the electrolytic process the alumina or aluminum oxide is broken down into aluminum and oxygen. The aluminum at the temperature at which the process operates is in the molten state and settles to the bottom of the electrolytic cell or pot. The cryolite bath being of lower specific gravity floats on top of the aluminum. As production progresses, the molten aluminum is siphoned from the bottom of the electrolytic cell into crucibles.

Q. And after it is siphoned into the crucibles, what happens to it?

A. The metal is then poured into molds or other furnaces depending upon the end use to which the metal is applied.

Q. When the metal is poured into the molds, in what form is it? What is it called?

[fol. 1553] A. Well, I have to think. I have always called it pig, but now we call it unalloyed ingot.

Q. Now, what is done with the unalloyed ingot after it is

cast or put into the melting furnace?

A. The unalloyed ingot is either sold in the unalloyed state or it is shipped to one of our plants or at some point, put into a melting furnace to which other elements are added to obtain a composition required for particular end uses involving a number of alloys.

Q. These end uses are called alloys?

A. No. The alloys are designed to satisfy the particular end use.

Q. And when an unalloyed ingot is sold, for what purpose

is it generally sold?

A. It is sold for subsequent re-melting and again alloyed or used in the composition to which it may meet requirements without other alloying.

Q. Now, how many alloys are there?

A. With the Aluminum Aluminum Association there are registered in the current list, I believe, 173 or in that order. These are recognized alloys in the industry.

#### OFFER IN EVIDENCE

Mr. Bergson: Would you please mark for identification as Defendants' Exhibit AR-69 a document, entitled "Regis-[fol. 1554] tration Record of Aluminum Association alloy designations and chemical composition limits for wrought alloys."

(Registration above-identified marked as Defendants' Exhibit AR-69 for identification.)

### By. Mr. Bergson:

Q. Mr. Hood, I show you a document which has been marked Defendants' Exhibit AR-69 and ask you if you can tell us what that is.

A. That is a registration record of Aluminum Association alloy designations and chemical composition limits for wrought aluminum alloys revised May 1, 1961, and issued by the Aluminum Association, 420 Lexington Avenue, New York 17, New York.

Q. Is that the current list of the Aluminum Association? A. Yes.

Mr. Bergson: I offer Defendants' Exhibit AR-69 for Identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendants' Exhibit 69 for Identification received in evidence.)

[fol. 1555] Q. Mr. Hood, in taking the unalloyed ingot and making an alloyed ingot, what steps are involved?

A. The unalloyed ingot is charged into a melting furnace, and to that charge is added the other elements which may be required to bring the alloy within the composition limits specified. These alloying elements may include such elements as copper, manganese, magnesium, chromium, nickel or others. After the alloying elements, which in some cases are added as pure metal and in other cases as a rich alloy, are added, the molten metal is stirred so as to get uniform distribution of the elements, and it is then cast into another form, depending again upon the requirements of the end use.

Q. Now, how is the determination made as to what type of alloy should be produced?

A. By the orders that we receive.

Q. And if you receive a large number of orders for one type of alloy, and a small number of orders for another type of alloys, you make more of the type for which you receive the large order, and less of the type for which you receive the small order?

A. Correct.

Q. How is E.C. ingot made?

[fol. 1556] A. E.C. ingot, which is the abbreviation for electrical conductor, is essentially pure metal. That means containing 99.45 per cent minimum aluminum, but in order to improve the electrical conductivity characteristics, the

element boron is added for the purpose of precipitating small amounts of titanium and vanadium which occur as impurities. Otherwise we call unalloyed ingot or pure metal.

Q. Now, you said, I believe you took pure aluminum and added boron. Is that what you said?

I want to be sure I'm right.

A. I did say that, yes.

Q. What proportion of Alcoa's production of unalloyed ingot would meet the requirement of your term "pure ingot"?

A. Well, based on the present analysis, and for that matter for the past several years, our average purity of ingot produced in our smelting operation has exceeded the minimum purity required for E.C. métal.

Q. So that all of your unalloyed aluminum could be used

for E.C. metal?

A. That's right. It may require blending, in some cases,

but the average would exceed it.

[fol. 1557] Q. Now, when you produce E.C. ingot what are the factors that determine how much E.C. ingot you will produce?

A. The orders we receive.

Q. And if you received more orders for E.C. ingot, could you produce more E. Coingot?

A. Yes. sir.

Q. And if you received orders for E.C. ingot up to 100 per cent of the capacity of Alcoa plants, and you wanted to forget all of your other business could you furnish that amount of E.C. ingot?

A. Yes, I'm sure if the management elected to do that,

we could do it.

Q. Now, in this process of alloying the pure ingot into an E.C. metal, E.C. grade ingot, are there any mechanical problems involved or created?

A. We have a choice of where we add the boron. We can add it in the smelting pot, or we can operate the smelting pots so as to produce unalloyed ingot, and then add the boron later in a re-melting operation. Or we can take the unalloyed ingot molten from the smelting pots, and transfer it directly to holding furnaces and add the boron at that time. .

[fol. 1558] Q. Do those create any problems?

A. We have had problems in the addition of boron in the smelting pots, because the pots are operated on a continuous basis, 24 hours a day, and once we get boron in the pots, it stays on and on and on, whether we continue to add it or not, we get the benefit, or the effect of it, in the form of slight amounts of boron which continually show up in the analysis of that particular pot.

Q. Do you prefer to do it in the smelting furnace, or in

the remelt furnace-1

A. Well, it gives us a better opportunity for control if we add the unalloyed ingot and the boron separately in the brick lined furnace which we can charge and then drain and clean. Our experience is that we have better control over, the boron content not only of the E.C. metal but on the other alloys which we may be manufacturing in the same plant.

Q. And is there any real problem presented by doing

that?

A. By doing what?

Q. What you just described.

A. Adding the boron to the unalloyed ingot in the melting furnace? No, that is not a technical problem.

Q. Is there any chemical problem?

[fol. 1559] A. No.

Q. Any scientific problem?

A. Well, of course, I might make it sound so easy there would be no need for a job, but there are always problems.

Q. There are still those 172 other alloys?

A. That's right.

Q. I gather that your testimony is if management so determined, and the orders were there, Alcoa's total metal supply could be cast as E.C. ingot?

A. That's right.

Q. No further questions.

#### Cross-examination.

### By Mr. Mahaffie:

Q. Just a few questions, Mr. Hood. First, could you make E.C. grade aluminum without boron?

A. You could make a conductor without boron.

Q. But it would not be E.C. grade?

A. It is not what we call E.C. grade.

Q. Any piece of aluminum is an electrical conductor; is it not, sir?

A. That's right.

Q. Now, Mr. Hood, should E.C. grade aluminum be [fol. 1560] correctly described as an alloy?

A. Yes, I think so.

Q. It is sold at a premiure over unalloyed aluminum, is it not, sir?

A. I frankly ean't answer that question.

Q. Well, there is evidence in the record of this case, sir, that it is sold at a premium over unalloyed pig or ingot aluminum. I wonder if you know, if you could state why; why it is sold at a premium price?

A. Well, I'm sure if our sales department or management indicates that it needs a higher price, there is a good reason

for it.

Q. You don't know the answer to my question?

A. That is not in my area of responsibility, and I would rather not try to explain it.

Mr. Mahaffie: No further question.

Mr. Bergson: No further questions.

[fol. 1561] Mr. Bergson: Mr. Healy.

The Court: I don't know, Mr. Bergson, whether—yes, AR-69 was received.

JOSEPH L. HEALY, resumed the stand, having been previously sworn, testified further as follows:

Direct examination. (Continuing)

## By Mr. Bergson:

Q. Mr. Healy, when we recessed last night we were discussing Defendant's Exhibit AR-44 for identification, which is the graph entitled "Alcoa primary aluminum" and one of the problems that we were discussing was what or where you obtained the figures for the light shaded area which by

the legend is, on the graph is denominated "Sales to domestic non-integrated companies."

A. Yes, sir.

Q. Now, in preparing this graph did you prepare a tabulation of figures of Alcoa's sales of primary aluminum to non-integrated producers?

A. Yes, I did.

Mr. Bergson: Would you mark this Defendant's Exhibit AR-44-A for identification.

[fol. 1562] (Tabulation marked as Defendant's Exhibit 44-A for identification.)

### By Mr. Bergson:

Q. I show you Defendant's Exhibit 44-A for identification and ask you if this is the tabulation of figures that you prepared for use in plotting that graph.

A. Yes, it is.

Q. From what sources did you obtain the information listed on Defendant's Exhibit 44-A for identification?

A. From company records.

Mr. Bergson. Now, your Honor, I re-offer Defendant's Exhibit AR-44 and now together with it Defendant's Exhibit 44-A for identification. I think these together with the witness' testimony yesterday clears up any difficulty that may arise in connection with the interpretation of this chart.

## Voir Dire Examination

#### By Mr. Melchior:

Q. Mr. Witness, AR-44-A for identification is entitled "Alcoa primary aluminum sales," is that correct? [fol. 1563] A. Yes, sir.

Q. Are these domestic sales?

A. Yes, they are domestic sales as qualified in the note.

Q. And you have excluded from these domestic sales, according to your note, exports, quantities that went to stockpile, quantities that were covered by toll conversion and by exchange, and sales to other primary producers; is that correct?

A. Yes, sir.

Q. Would you state how you went about excluding the

exchanges in sales to other primary producers?

A. The detailed records were examined, detailed sales records were examined for sales to other primary producers.

- Q. Were sales and exchanges with other producers frequent?
  - A. No. sir.
- Q. Do you recall about what the tonnage or poundage was!

A. No. I do not recall.

Q. You can't give us an indication on a percentage basis [fol. 1564] or any other way?

A. No, I really can't. It was inconsequential.

Q. It was inconsequential?

A. Yes, sir.

Q: One percent or less?

A. Certainly:

Q. Now, what does toll conversion mean?

A. Toll conversion refers to metal which we received from our customers which we processed into another product and re-shipped to the other company.

Q. Who has title?

A. The customer retains title.

Q. I see. Now, what do you mean by stockpile?

A. Those refer to shipments to the government stockpile

under General Services Administration contracts.

Q. These are not sold. Once they are transferred to the stockpile you have no further control over them, your company?

A. That is true.

Q. Now, I notice that on the worksheet you have listed at the top of the page "Alcoa primary aluminum production." You don't have indicated on that worksheet any-

where sales, total sales, do you?

[fol. 1565] A. On the worksheet there are two lines, one captioned "Pig and ingot sales to customers" and the second line, "Pig and ingot sales to Alcoa International, Inc." These two lines cover the sales of primary aluminum during this period.

Q. Now, what is the relationship between these two lines

and the figures that follow and the statement in the legend on the graph were you say "Sales to domestic non-

integrated companies"1

A. These two lines on the worksheet cover all sales whether they are stockpile or export or sales to other primary producers. Whereas the sales as listed on the other sheet are qualified as shown.

Q. Now, what is the relationship between the legend statement, "Sales to domestic non-integrated companies"

and AR-44-A?

A. The figures on AR-44-A were plotted directly on AR-

Q. In other words, you can compute mathematically what the sales were to domestic non-integrated companies and what percentage of total sales they comprised? You could do that?

[fol. 1566] A. Well, from AR-44 you can calculate mathematically the sales of Alcoa primary aluminum as qualified

in the note of 44-A.

Q. Have you made that computation?

A. Well, sir, the figures on AR-44-A were plotted mathematically on the chart, so it went in the other direction.

Q. I see. So you can calculate it by looking at the chart?

A. Yes.

Q. Now, what do you mean by the legend "Non-integrated companies"?

A. Companies other than primary aluminum producers.

Q. Any company that purchases aluminum from Alcoa that is not itself a primary producer?

A. Yes, sir.

Q. Would this include fabricators of wire and cable products?

A. Yes, sir.

Q. Would it include fabricators of a variety of other aluminum products?

A. Yes, sir.

Q. It would include all aluminum fabricators to the [fol. 1567] extent that they purchased from Alcoa?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Mr. Melchior: No objection.

The Court: I will receive it. 44 and 44-A.

(Defendant's Exhibit AR-44 and AR-44-A for identification received in evidence.)

### By Mr. Bergson:

Q. Now, Mr. Healy, referring to Exhibit AR-44, what is represented by the difference between the black portion and the dotted line?

A. The difference between the solid black portion and the dotted line represents sales to domestic non-integrated companies; it represents sales to the stockpile; export sales; sales to other primary producers. It includes metal added to our inventories. It includes capacity which is not now being utilized.

Q. So that the difference between the solid black portion and the dotted line represents the amount of metal that Alcoa would have available to others if it operated at full

[fol. 1568] capacity, is that right?

A. Yes, sir.

Q. Talking about operating at full capacity, I notice the government has introduced in evidence a chart showing 1960 capacity of primary aluminum producers in existence and under construction.

A. Yes, sir.

Q. I think this chart is government exhibit 465. Would you please look at that chart. I ask you why in preparing the defendant's chart AR-7 you did not plot capacity under construction.

A. I was requested to prepare a chart showing Alcoa's physical capacity to produce primary aluminum, and that's what my figures represent.

Q. And what is the difference between the two charts?

A. The difference between the two charts consists of

capacity that is so-called under construction.

Q. Now, what is-when you say so-called "under con-

struction," what do you mean by that?

A. By that I mean that this capacity has been partially [fol. 1569] constructed, the work is not now under way on this capacity, so the words "under construction" do not literally apply, and the work is not now being performed.

Q. Is there capacity that is planned that is not put under

construction for a considerable number of years?

A. I am sure there must be. I am not familiar with what 'the company's plans might be beyond the capacity that is represented in the government's chart as being under construction.

Q. Now, Mr. Healy, I invite your attention to government exhibit AR-45 for identification.

The Court: AR-45, Mr. Bergson?

Mr. Bergson: AR-45, yes, your Honor. It follows the black graph.

The Court: Okay. You said government exhibit.

Mr. Bergson: I beg your pardon. The Court: It is defendant's exhibit.

Mr. Bergson: I can't shake the fact that ten years ago I used to work for the government.

The Court: You seem to have recovered from it.

## [fol. 1570] By Mr. Bergson:

Q. Would you state the title of that chart.

A. The title of the chart AR-45 is "Aluminum pig ingot or billet to be made available to non-integrated users under provisions of GSA supply contracts."

Q. Was that chart prepared by you or under your direc-

tion and supervision?

A. Yes, it was.

Q. Now, I notice thereon that you list the Harvey Aluminum Company, and you have a vast number of unknowns there. Was this because the information was unavailable to you at that time?

A. Yes, sir, that's correct.

Q. That information has become available since the trial of this case. But except for that area of unknown, to the best of your information and belief, this chart is entirely correct and accurate?

A. Yes, it is.

### OFFERS IN EVIDENCE

Mr. Bergson: I offer Defendant's Exhibit AR-45 for identification.

Mr. Melchior: No objection.

[fol. 1571] The Court: Received.

(Defendant's Exhibit AR-45 for identification received in evidence.)

Mr. Bergson: Your Honor, you will perhaps recall Mr. Harvey testified that his company had a GSA supply contract which required them to make available to Small Business 35 percent of a 54,000 ton capacity.

The Court: I think so.

Mr. Bergson: Notice these figures there are in millions of pounds, so that when you take the 54,000 tons you have to multiply it by——

The Court: We will take a short recess.

(A short recess was taken.)

[fol. 1572] (After recess)

By Mr. Bergson:

Q. Mr. Healy, before proceeding with the chart that we were discussing just prior to the recess, I would like to go back to Defendants' Exhibit AR-7 and Government's Exhibit 465, in which in our chart we do not show capacity under construction. Does Alcoa have plants for increasing its capacity?

A. Yes, sir.

Q. How long has it had these plants?

A. Well, several years.

Q. And the capacity has not been increased between the time the plan was formulated up to the present time?

A. It hasn't been increased to the full amount of the plant.

Q. And why is that?

A. Because there has been a condition of over capacity and over supply of aluminum in the industry; the metal is not needed.

Q. Now-

The Court: Let me interrupt here. Does the Government exhibit include, that is 465, exclude the expansion of Alcoa that Mr. Healy just mentioned, or does anybody know? [fol. 1573] Mr. Melchior: Well, the Government, of course, got the information from the year book.

Mr. Bergson: I think Mr. Healy could answer that ques-

tion.

The Witness: In my checking the Government's figures, it apparently does include this capacity reported under construction, which physically isn't under construction.

The Court: All right.

Mr. Bergson: AR-45 has been received in evidence? The Court: Yes.

### By Mr. Bergson:

Q. Now, Mr. Healy, I invite your attention to Defendants' Exhibit AR-46 for identification and ask you if you can describe that exhibit. First, was this exhibit prepared under your direction and supervision?

A. Yes, sir.

Q. Would you describe it, please?

A. This exhibit is captioned "Supplying the Non-Integrated Fabricators Sales" of Primary Aluminum and [fol. 1574] Domestic Integrated Producers." This is a document which relates to United States versus Aluminum Company of America, 1957, and we took the information from that source.

Mr. Bergson: I offer Defendants' Exhibit AR-46 for identification.

Mr. Melchior: Are you bringing us up to date, Counsel? Mr. Bergson: No, we are not bringing it up to date. We

don't have the information available to us.

Mr. Melchior: Well, let me ask you whether AR-44A, which you introduced this morning, is relevant to this tabulation in any way? Would it be a part of this tabulation?

Mr. Bergson: Well, it could be, but this tabulation is showing Alcoa's percentage of supply to non-integrated and the total amount of aluminum supplied to non-integrated. And we have no way of knowing what the figures are of the other primary fabricators, primary producers.

We used the period that was available to us. It goes to the first nine months of 1956. We couldn't bring it up to date. [fol. 1575] Mr. Melchior: You couldn't bring it up to date for any of the other companies but you could bring it up to date for Alcoa.

Mr. Bergson: We could for Alcoa but couldn't show it as

a percentage of the total.

Mr. Melchior: No objection. The Court: I will receive it.

(Defendants' Exhibit AR-46 for Identification received on evidence.)

## By Mr. Bergson:

- Q. Now, Mr. Healy, looking at this chart what percentage of sales of aluminum by primary aluminum producers to non-integrated fabricators was enjoyed by Alcoa in 1947?
  - A. 88 per cent.
  - Q. And in the first six months of 1956?

The Court: First nine months. The Witness: First nine months.

Q. First nine months of 1956.

A. 41 per cent.

Q. Now, Mr. Healy, I invite your attention to Defendants'. Exhibit AR-47 for identification and ask you if this exhibit was prepared under your direction and supervision? [fol. 1575a] A. Yes, it was.

Q. Would you please describe it?

A. This exhibit is captioned "Primary purchased by Rome," and it shows the amount of primary aluminum purchased by Rome as related to the sales of primary aluminum to non-integrated fabricators. Two comparisons are made. One to total sales to non-integrated fabricators by U.S. primary producers, and the second comparison in terms of Alcoa sales of primary aluminum to non-integrated fabricators.

[fol. 1576] Mr. Bergson: I offer Defendant's Exhibit AR-47 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-47 for identification received in evidence.)

Q. Now, Mr. Healy, in preparing this chart I notice that you have no figures under total sales of primary producers for the years 1957 and 1958. Why is that?

A. That information was not available to me.

Q. Was the information for 1954, 1955 and 1956 taken from the previous chart?

A. Yes, it was.

Q. Now, you have the period from 1954 to 1958 for Alcoa, because that period was available to you?

A. Yes, sir.

Q. Why did you cut this chart off at 1958?

A. Because 1958 was the last full year prior to the acquisition.

Q. And this chart shows what Rome's percentage of purchases was, as compared with the rest of the sales to non-integrated, both in terms of total sales by primary pro-[fol. 1577] ducers and in terms of sales by Alcoa Aluminum?

A. Yes, sir.

Q. Would you state what those percentages are.

A. As a percentage of total sales to non-integrated fabricators it was a 4 percent in the year 1954, and .7 percent in the year 1956. As a percentage of Alcoa's sales to non-integrated fabricators, it was 1.2 percent in 1954 and 1.7 percent in 1958.

Q. Now, Mr. Healy, I invite your attention to Defendant's Exhibit No. AR-48 for identification, and ask you whether that chart was prepared under your direction and supervision.

A. Yes, it was.

Q. Would you please describe that chart.

A. That chart is captioned "Primary aluminum purchased by Rome." It covers the same type of information as AR-47, the only difference being that AR-48 is in terms of pounds; AR-47 is in terms of dollars.

'Mr. Bergson: I offer Defendant's Exhibit AR-48 for identification.

Mr. Melchior: No objection.
[fol. 1578] The Court: Received.

(Defendant's Exhibit AR-48 for identification received in evidence.)

Q. Now, Mr. Healy, I invite your attention to Defendant's Exhibit AR-49 for identification, and ask you whether that exhibit was prepared under your direction and supervision.

A. Yes, it was.

Q. Would you please describe that exhibit.

A. This exhibit is captioned "Primary aluminum purchased by Rome." It shows the Rome purchases of primary aluminum, the total United States primary aluminum production, and Alcoa's primary aluminum production.

Mr. Bergson: I offer Defendant's Exhibit AR-49 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-49 for identification received in evidence.)

- Q. And again directing your attention to the years 1954 and 1958, what percentage of total United States primary aluminum production did Rome's purchases represent? [fol. 1579] A. Rome's purchases represented one tenth of one percent in the year-1954, and the same percentage in 1958.
- Q. And in one of the intermediate years it was a little.

A. Point 2. That is, two tenths of one percent.

As Rome's percentage of Alcoa's primary aluminum production. It ranged from one tenth of one percent to .3 or three tenths of one percent for these years.

- Q. Now, Mr. Healy, I invite your attention to Defendant's Exhibit AR-50 for identification, and ask you whether this exhibit was prepared under your direction and supervision.
  - A. Yes, sir.
  - Q. And I ask you to state what this exhibit is.
- A. This exhibit shows the purchases by Rome of copper and aluminum, and this refers to the Rome plant only.

Mr. Bergson: I offer Exhibit AR-50 for identification.

Mr. Melchior: No objection.

The Court: Received.

[fol. 1580] (Defendant's Exhibit AR-50 for identification received in evidence.)

Q. Now, this exhibit is in terms of dollars, Mr. Healy?

A. Yes, sir.

Q. And it shows what?

A. This exhibit shows that of the total purchases of aluminum and copper, the copper portion ranged from a low of 93.7 percent in the year 1958 to a high of 97.7 percent in the year 1954.

Q. Now, I invite your attention to Defendant's Exhibit AR-51 for identification. That exhibit contains the same information in pounds that was contained in the previous exhibit in dollars, is that correct?

A. Yes, sir.

Mr. Bergson: I offer Defendant's Exhibit AR-51.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-51 for identification received in evidence.)

Q. I now invite your attention to Defendant's Exhibit AR-52 for identification, and ask you if that exhibit was [fol. 1581] prepared under your direction and supervision.

A. Yes, it was.

Q. And would you please describe that exhibit.

A. This exhibit is captioned "Copper and aluminum wire and cable sold by Rome." And it show the copper wire and cable sold in terms of dollars and the aluminum wire and cable also in dollars.

Mr. Bergson: I offer Defendant's Exhibit AR-52 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-52 for identification received in evidence.)

Q. Now, what is the range of copper percent as shown in that exhibit?

A. This exhibit shows that the copper sales by Rome ranged from 90.3 percent to 93.9 percent in this period. [fol. 1582] Q. Now, I invite your attention to Defendants' Exhibit AR-53 for identification and ask you whether this exhibit was prepared under your direction and supervision?

A. Yes, it was.

Q. Would you please describe the exhibit?

A. This exhibit is captioned "Aluminum Wire and Cable Overlap Products Sold By Rome." It shows the overlap wire and cable as a percentage to total wire and cable. And this is aluminum. And it shows the percentage of overlap ranges from 5.8 to 8.5 per cent.

Mr. Bergson: I offer Defendants' Exhibit AR-53 for Identification.

Mr. Melchior: Does this tabulation purport to show what percentage of Rome's products were involved in the over-lap?

Mr. Bergson: It says wire and cable products.

Mr. Melchior: Wire and cable products involved in the overlap?

The Witness: Yes.

Mr. Melchior: We object to this on the ground of relevancy; on the ground that the particular part of a com[fol. 1583] pany's business that may be involved in a
merger is not relevant to consideration as to legality.

The Court: I will receive it:

(Defendants' Exhibit AR-53 for identification received in evidence.)

The Court: This means, Mr. Healy, that in 1954 the sales of the so-called overlap wire and cable by Rome in that year represented five and nine-tenths per cent of its total sales of wire and cable; am I right about that?

The Witness: Yes, sir, that's right.

The Court: I see. All right.

Mr. Bergson: Now, your Honor, I am going to pass the next three exhibits because I am going to put those in through another witness. They were not prepared by Mr. Healy.

The Court: All right.

# By Mr. Bergson:

Q. Mr. Healy, I now invite your attention to Defendants'. Exhibit AR-57 for identification and ask you whether that exhibit was prepared under your direction and supervision?

A. Yes, it was.

[fol. 1584] Q. Would you please describe the exhibit?

A. This exhibit is captioned "Changes in Base Price of Primary Aluminum, E.C. Redraw Rod, selected Cable Sizes, July 22, 1946 to date and Comparison of Spread Between these Products during the same period."

Q. Why did you select the various wire and cable sizes

that were selected?

A. These wire and cable sizes were selected as a representative size in each type of stranding, each major type of stranding of cable.

Mr. Bergson: I offer Defendants' Exhibit AR-57 for identification.

Mr. Melchior: I note at the bottom of the tabulation that you say, "The source of data above prices taken were included from yellow price data sheets." Whose yellow price data sheets?

The Witness: Alcoa's.
Mr. Melchior: Alcoa's?
The Witness: Yes, sir.

Mr. Melchior: In other words, those are all taken from Alcoa's company data sheets.

The Witness: Yes, sir.

Mr. Melchior? No objection.

[fol. 1585] The Court: I will receive it.

(Defendants' Exhibit AR-57 for Identification received in evidence.)

The Court: I wish you would explain it, Mr. Bergson. I am not so certain I understand it.

Mr. Bergson: Your Honor, one of the contentions that the Government has advanced in this case is as a producer of pig and ingot, as a producer of redraw rod and as a producer of the finished product, Alcoa is in a position to exert a squeeze on its competitors and therefore has some undue advantage over the competitors.

The purpose of this exhibit is to show that in its pricing

policies Alcoa made a steady effort to maintain a reasonable relationship between the prices of these various products so that the squeeze would not result. Alcoa was in a position of being—long before the acquisition—in the position of being both a supplier and a competitor of some of these independents. We introduced this exhibit to show that Alcoa in pricing has maintained a spread so that this squeeze that you have heard about, if Alcoa's prices have been followed, would not have resulted. Now, these are the [fol. 1586] Alcoa published prices. It is quite true that Alcoa did not necessarily sell at these prices because they couldn't sell at their published prices and they had to sell off the list on occasion to meet competition.

The Court: The only observation, I realize that the Government has urged that in the Crown Zellerbach case, on which the Government pretty near relies, that it doesn't

amount to much.

Mr. Bergson: I think it doesn't amount to much, but I think Mr. Melchior better speak for himself on that.

Mr. Melchior: I am not sure what you mean by that, your Honor, that the Crown Zellerbach case doesn't apply?

The Court: The provision where there is reasonable probability of lessening substantial competition not where the merger may result in the company having power to over-price or power to exclude competition. At least that is what the Reporter says that the Crown Zellerbach case holds. I am not so certain that I quite agree with the Reporter about that, but it did occur to me as you went [fol. 1587] along, we spent some time on spread, and we also used the Crown Zellerbach case as a supporter of the Government's position, but I am not certain of that myself.

Mr. Melchior: Well, first I would like to clarify my remarks about Crown Zellerbach had to do primarily with

the question of line of commerce.

The Court: I know.

Mr. Bergson: You can't dismiss it. Mr. Melchior: I am not dismissing it. The Court: I know, but I felt—

Mr. Melchior: But I want to clarify it.

The Court: Just a minute. Take it slow. I felt that you were urging in your brief that you sort of relied upon it as an authority.

Mr. Melchior: We do.

[fol. 1588] The Court: I am not so certain I agree with the decision. Of course, they were the circuit court and I am not, and I have been told at times I better pay some attention to it.

Mr. Bergson: Your Honor, your own circuit takes it a little different than that circuit anyway.

The Court: I won't get into that.

Mr. Melchior: Would you like me to comment on that, Judge Brennan?

The Court: Yes.

Mr. Melchior: With the prefacing remarks that most of my comments having to do with Crown Zellerbach had to do with lines of commerce, we do urge that Crown Zellerbach is applicable here. We don't say that the percentage figures or the market values in this case are comparable to the Crown Zellerbach situation, nor do we urge in our argument that any control of prices is a necessary element to a proof of a Section 7 case.

The Court: Why do we spend so much time on this? [fol. 1589] Mr. McIchior. Because we think this is a very important market condition, which will shape the industry in years to come, and against the backdrop of the merger and against the backdrop of the integration in the industry, this is an extremely important market condition. While it is not necessary for us to prove control of price or to prove the fact of a price spread, we do feel that if one exists it is highly relevant. We certainly think one exists here.

Mr. Bergson: Your Honor, I might add just for the sake of completing the discussion—I hope it will complete the discussion—that to the extent that Alcoa had the power to squeeze, it had the power to squeeze before the acquisition, before it made these same products before the acquisition, and this acquisition couldn't remotely have anything to do with Alcoa's power to squeeze.

The Court: Well, I think I am going to take it because—

[fol. 1590] Mr. Bergson: This is purely a defensive charge.

The Court: I have got to evaluate these things. There may be something in what you say, Mr. Melchior; I sort of

am inclined to think there is. As I read this Crown Zellerbach case, they say no. When you get into the price situa-

tion, power over price, that's something else.

Mr. Melchior: Well, now, your Honor, I would like to be understood in this respect. Anything we may show in a Sherman Act proceeding, whether it be Section 1 or Section 2 or any of the others-

The Court: I am talking about the Clayton Act.

Mr. Melchior: Well, I am too, but what I would like to say is anything that could be shown in a Section 1 or a Section 2 can be shown in a Section 7 proceeding, and could be highly relevant, but it isn't a requisite of proof in a Section 7 case to show any of these Sherman Act criteria. [fol. 1591] Mr. Bergson: This is another illustration, your Honor, of how they are confusing the Sherman Act and the Clayton Act. They say first that the Sherman Act tests of lines of commerce have nothing to do with the Clayton Act. Now they say the Sherman Act tests in other aspects are relevant here.

The Court: I don't think we need to debate it at any great length. I talked and listened to this spread and thought about it at the time, because I am inclined to think there is something to it and that it shouldn't be ignored entirely, but the way I read-the Zellerbach case, they don't

place much importance on it, if any.

Mr. Melchior: Was one found there? Did the Court say a price squeeze was found there?

The Court: No.

Mr. Melchior: I am not familiar with the language you

are talking about.

[fol. 1592] The Court: It just says the problems involved in the Crown Zellerbach case. It is a very definite one and so on. And as suggested in the Bethlehem Steel case when the question is power over price, substitute production may be relevant because they can limit that power. I can understand that. But the issue in the Clayton Act Section 7 is not whether the merger may result in the company having power over price. And of course to interject there we spent quite a little time talking about squeeze.

Mr. Melchior: Yes, sir.

The Court: Which indicates to me is power over price. They say just in plain simple English the issue is not under

Section 7 of the act. It is not whether the merger may result in a company having power over price or the power to exclude competition. The issue under Section 7 is whether there is reasonable probability of lessening competition. That's pretty direct language. That Section 7 case doesn't [fol. 1593] have much to do with power over price. I am not quite prepared to say in my own opinion that language, even though it is of a superior court, is quite right.

Mr. Melchior: May I comment on that language, Judge

Brennan?

The Court: Yes.

Mr. Melchior: I think what the Court is saying is this, that power over price is a necessary element to the proof of a Sherman Act case, and it is not a necessary element in a Section 7 case. But if it is present, you can certainly show it in a Section 7 case. Just for example as this. Section 7 talks about tendency to monopoly. Now, Section 2 of the Sherman Act talks about monopoly. Now certainly if we brought a case under Section 7 and could prove monopoly, certainly that would be relevant in a Section 7 proceeding and I think the analogy is precisely on the point. They are saying—

The Court: All I know is the language they used, and [fol. 1594] here it is again. The issue under Section 7 is not whether a merger may result in the company having power over price. Now that is the language. You can interpret it any way you want to, and I am going to interpret it and I am kind of with you on it. I think we are a little bit rough on you here, but that's the language.

Mr. Melchior: Well, I think the reason-

The Court: I know, but what is the use of you and I guessing about the reason the court did something? All I am talking about is the simple proposition—this is the language of the Zellerbach case.

Mr. Melchior: Yes, sir, we adhere to it.

The Court: And I think that perhaps we have over-emphasized, the government especially, has over-emphasized the question of spread, but I thought we will take this exhibit because having let the government emphasize the question, I certainly can't stop the defendant from minifol. 1595] mixing the question of spread. How much the ultimate question of spread, control over price will become

a turning point in this case is extremely doubtful in my mind.

Go on with the lawsuit, I will receive it.

By Mr. Bergson:

hibit AR-58.

Q. Mr. Healy, I invite your attention to Defendant's Ex-

The Court: Before you go to that— Mr. Bergson: I beg your pardon, sir.

The Court: —I'd like a little explanation. I first looked at these charts without my glasses on; sometimes I can understand them better without the glasses. I would like to have Mr. Healy tell me just a little bit—we have talked spread and we have talked price as between the selling price of a product and the cost of the primary material from which that product is made. We have devoted quite a little time to that in the government's case. I think this [fol. 1596] table is directed to that, and maybe a little explanation from you would help me; and I will put on my glasses while you explain it.

The Witness: All right, sir. This table was intended to show the spread in price, for example, between primary aluminum and EC redraw rod. The top line shows that as of July 22nd, 1946, primary aluminum was 14 cents a pound. EC redraw rod was 18½ cents a pound. The difference of four and a half cents then shows in the third column from

the right, .045.

The Court: Oh, I see. And those figures in the third column from the right, in fact, the last three columns are in cents.

The Witness: Well, dollars.

The Court: Dollars. But the first one, for instance, in 1946 is four and a half cents.

The Witness: Yes, sir.

[fol. 1597] The Court: So that perhaps I should address this to counsel rather than to you. But you seek by this chart to show that the difference between the primary aluminum or redraw rod and not the finished product.

Mr. Bergson: Yes. That is cable.

The Witness: That comes in later, in the second column from the end and third column from the end.

The Court: In other words, you are trying to show that

that spread is reasonably constant.

The Witness: Well—and show the trend in the spread. If you look down any one of these columns, it shows the history over this period.

The Court: The price goes up, but the spread remains,

at least on this chart, reasonably constant.

The Witness: Well, I'd say, your Honor, that there are substantial changes in the spread. If you would look at the second column from the right on redraw rod to cable, the [fol. 1598] top figure is 10 cents, the bottom figure is 18.6 cents per pound, showing that there has been a substantial widening of the spread.

Mr. Bergson: Yet in a couple of periods the spread did

narrow.

The Witness: Yes.

[fol. 1599] The Court: When I used the word "constant" I guess I am using the wrong word. I guess it is "fluctuating".

Mr. Bergson: It is an undulating spread.

The Court: Yes.

Mr. Bergson: But the overall advantage if you were to plot it in a graph would show a constantly rising spread with dips in it. And this is also true as to the spread between pig and cable because pig was 14½ in 1946—I mean the spread was 14½ cents in '46 and the last one, which was November of '61, it was 22 1/10 cents.

Now I think-I don't know whether you want the witness to testify to this or me to make a statement on the record.

The Court: Or you to test 'y to it.

Mr. Bergson: I make the admission for the record, and that is that Alcoa was not at all times able to maintain that spread because if it had tried to maintain that spread it wouldn't have sold any wire or cable at all because it had to meet competitive prices.

The Court: Yes.

[fol. 1600] By. Mr. Bergson:

Q. Is that correct, Mr. Healy?

A. Yes sir.

The Court. I think this would be a good time to recess. It is a quarter to one. Recess until two o'clock.

The Clerk: Court is in recess until two o'clock.

(Whereupon at 12:45 p.m. o'clock an adjournment was taken to 2:00 o'clock p.m. of the same day.)

[fol. 1601] AFTERNOON SESSION

APPEARANCES: Same as Morning Session.

JOSEPH L. HEALY, resumed the stand, and testified further as follows:

Direct examination. (continuing)

# By Mr. Bergson:

Q. Mr. Healy, directing your attention again to Defendants' Exhibit AR-57, I think it would be helpful if you could explain for the record just how that chart should be read.

A. This chart shows Alcoa's published sales prices for certain products. It shows the published prices of primary aluminum which was used for electrical conductor purposes. It shows the published prices of E.C. redraw rod. The difference between those two sets of figures is then shown in the column which is captioned: "Spread in base price pig to redraw rod."

In the center of the chart are several sizes of bare cable. These sizes were chosen as representative sizes of the various stranding of bare cable which Alcoa makes. These [fol. 1602] several items, there are six of them, six individual cable size items, added together and divided by six, provide the arithmetic average shown in the fourth column from the right.

Now, I would like to point out that this arithmetic average is not representative of the actual price at which the cable was sold because of the fact that cable at various times was sold at less than schedule to meet competitive

price. Nor is it representative of Alcoa's pattern of bare cable business.

As I stated, the sizes chosen are merely representative sizes in each stranding. It is not a style or pattern of business.

The difference between the column captioned "E. C. Redray Rod," and the column captioned "Arithmetic Average" represents the spread in base price of redray rod to cable, which is the second column from the right.

The last column on the right "Pig to cable," is the difference between the column captioned "Primary Aluminum," and the column captioned "Arithmetic Average," which is the average price of cable for the sizes shown. This chart [fol. 1603] was intended to show over a period of time the change in spread between these products.

Q. Now, on the right—I mean on the left-hand side, you have a column entitled "Date of Price Changes," are those all of the dates on which price changes occurred between

July of 1946 and October of 1961?

A. That is true. These are all of the dates on which changes in our published prices of these products occurred.

Q. Now, I notice on this chart that in the column entitled "Spread in Base Price, Pig to Redraw Rod," which is the third column from the right, in 1960 there was a drop in the spread from 8½ cents to 4.2 cents. Do you know the reason for that drop?

A. Yes, I do. Redraw rod had been selling at substantially under our published price to meet a competitive situation. On the date opposite the spread to .042, which is April 12, 1961, on that date, the actual price at which Alcoa at that time was selling redraw rod was incorporated into our published price schedule instead of the price that had theretofore been shown.

Q. And during that period when the price of redraw rod [fol. 1604] or the difference in the spread in redraw rod narrowed, I notice that in the next column the difference in the spread between redraw rod to cable widened. Is that due to the drop in the redraw rod price?

A. Yes, that's due to the same situation.

Q. Now, in a situation of that kind a non-integrated producer who did not make his own rods—would he be in a better position or worse position?

A. A non-integrated producer who did not make his own rod?

Q. Who purchased rod.

A. A non-integrated producer who purchased rod—his position, actually, was unchanged from say the day before this change until the day after, because the price which he paid for rod in the market place was unchanged.

Q. Now, I think you have made it clear that the prices that are shown here are the list prices, and do not necessarily reflect the actual selling prices?

A. That is true and I would like to emphasize it.

Q. Now, I invite your attention to Defendants' Exhibit AR-58 for identification and ask you whether that exhibit was prepared under your direction and supervision? [fol. 1605] A. Yes, sir.

Q. Would you please describe the exhibit for us?

A. This exhibit is captioned "Alcoa Electrical Conductor Business Reported Lost to All Competitors, April, 1957 through March, 1959," and this shows the business which Alcoa lost, to the extent that we had recorded it, to each of several competitors.

Mr. Bergson: I offer Defendants' Exhibit AR-58 for identification.

Mr. Melchior: The Government objects to the offer of this exhibit, your Honor, on the basis of hearsay and relevancy. This apparently is based on AR-29, which is the document prepared by Mr. Hemeter, and which Mr. Hemeter testified was not complete, but about 75 per cent complete. Mr. Hemeter also indicated that as far as he was concerned, the material contained therein was also hearsay, and I call your attention to the source data indicated at the bottom of this tabulation, which states it is based on summaries of Alcoa's lost business reports which apparently were the documents utilized by Mr. [fol. 1606] Hemeter. They are also based on Rome's sales orders, which we have no way of knowing precisely how they were utilized in conjunction with this.

. Mr. Bergson: Do you wish to hear me on this, your Honor?

The Court: Let me make this observation. This, as I see it, is nothing more than a summary, in understandable

form, of the prior exhibit which I received. At least the major portion of it.

Mr. Melchior: The major portion of it, yes.

The Court: So in that sense, why, if I was right in receiving the other exhibit, then I would be right in receiving this one. Rome's sales orders—that's probably true. The sales orders themselves.

Mr. Bergson: We have had Mr. Rolston's testimony as to the search Rome made, and this was all done for the purpose of laying the foundation for this exhibit. He testified a search of Rome's records was made and they can't find—the only three orders they could find were the ones he mentioned which totaled 17,000 pounds, and we have put it [fol. 1607] that way—this was all done in an effort to make this chart as honest and complete as possible.

The Court: Yes, I think there's enough foundation; I

will overule the objection and receive the exhibit.

Q. Now, Mr. Healy, in the caption of the exhibit the dates referred to are April, 1957 through March, 1959. Why were those two dates selected?

A. Those were the dates which you requested me to use

in preparing this table.

Q. Did I tell you why I wanted those dates used?

A. As to March, 1959, the month of March concluded the period prior to the acquisition, and as to April, 1957, I believe that that was the inception of the record which Mr. Hemeter had made.

Q. I asked you to cut this off at the time Alcoa acquired Rome?

A. Yes.

Q. And this chart shows that of the lost business that Alcoa recorded, what percentage was lost to Rome?

A. Five-hundreds of one per cent,

Q. No further questions.

(Defendants' Exhibit AR-58 for Identification received in evidence.)

### [fol. 1608] Cross-examination.

#### Mr. Melchior:

Q. Mr. Healy, directing your attention to AR-7, I believe you discussed with counsel in connection with this tabulation, Government Exhibit 465?

A. Yes, sir.

Q. Now, I ask you, Mr. Healy, are you familiar with the mineral yearbook of the Book of Mines, Department of the Interior?

A. Yes, sir.

Q. Did you consult that in connection with the preparation of this tabulation AR-7?

A. Yes, sir.

Q. In fact you have it in one of the footnotes as a source of data?

A. Yes, sir.

Q. Now, I believe you were asked on direct examination with particular respect to GX-465 as to Alcoa's proposed or new capacity under construction?

A. Yes, sir.

Q. What was your response?

- A. My response was, sir, that that capacity is not physically now under construction in the sense that any work is being performed on the facilities. The facilities are par[fol. 1609] tially complete, they have been for an extended period of time, but work of no significance is now being done on them.
- Q. Now, this capacity that was under construction, is this all of Alcoa's capacity that was under construction? Let me rephrase the question. Has all of Alcoa's proposed or under construction capacity now being suspended?

A. No, sir, not all of it.

Q. Could you enlighten us to which has been suspended

and which is still continuing?

A. Yes, sir. In my examination of document 465 it appeared to me that included in the Government's capacity was 202,000 tons, which was listed as being under construction. Of this amount 150,000 tons is shown for Evansville; 32,000 tons for Massena and 20,000 tons for Point Comfort, Texas. The 150,000 tons at work is uncompleted. I

would also like to state that this work capacity was first reported publicly as being under construction in June, 1956, As of right now it is still uncompleted.

Q. Is there any work going on down there, any construc-

tion work?

[fol. 1610] Not of any major significance.

Q. There is work going on there, though?

A. There may be, sir.

Q. Well, do you know?

A. I do not know if there is any small amount of work going on. I don't know there is no major amount of work going on.

Q. Is the project an abandoned project?

A. No. The project is not an—is just presently not under construction. It is not being completed at this time because the capacity is not needed. Alcoa has other complete facilities that are not in use. It does not need this uncompleted facility.

Q. I see.

A. At this time.

Q. In the event capacity would be needed would you know what Alcoa's intention with this would be?

A. It would be very definitely to bring this to completion

and use it.

Q. All right. Will you tell us about Massena?

A. Yes. With respect to Massena, the 32,000 tons was first reported as being under construction in, sometime in late '57. Between late' '57 and early '58. And the 32,000 tons is as of today not completed.

[fol. 1611] Q. Is there any construction work going on

there, any work?

A. No, sir, not of any significance.

Q. What is the status of the project?

A. The status is that no construction work is now in progress. The work is just not being done.

Q. The same as with Evansville?

A. Yes, sir.

Q. Now, how about the last installation you mentioned, in Texas?

A. In regard to the 20,000 tons at Point Comfort, that capacity has been completed and was completed sometime between the end of 1959 and the first quarter of 1960.

Q. Now, Mr. Healy, do you have any information with respect to the under construction capacity for any of the other major aluminum companies?

A. No, sir.

Q. You do not. Mr. Healy, directing your attention to the column, entitled "Primary Aluminum Capacity," I note that in the year 1959 Alcoa has what purports to be 33 per cent of United States domestic capacity; is that correct?

A. Yes, sir.

[fol. 1612] Q. And what percent did it have in 1960?

A. 35 per cent.

Q Do you know what percentage Alcoa had as in the year 1961?

A. No, sir, I do not.

Q. You have no figures for '61!

A. I do not know.

Q. Do you know whether figures for domestic total had been issued by any agency?

A. I don't know that, sir.

Q. You don't know!

A. No.

Q. Do you have figures for Alcoa in the year 1961?

A. I don't have them with me but I know that they are available.

Q. You know that they are available?

A. Yes, sir.

Q. Do you know whether they were larger or smaller than the year 1960?

A. I do not know, sir.

Q. You do not know !

A. No.

Q. And you cannot make a computation from the information you just gave me as to this new capacity?

[fol. 1613] A. I would hate to assume that the 20,000 tons was the only difference.

Q. Now, Mr. Healy, directing your attention to AR-44 and also AR-44A, which supplements the information contained in AR-44; is that correct?

A. Yes, sir.

Q. And with respect to AR-44A, which purports to show Alcoa primary aluminum sales, and I believe you indicated that they were domestic sales, now if you will look at the

year 1950, we will find that in pounds Alcoa's primary aluminum sales were what figure, Mr. Healy, for 1950?

A. 167,497,000 pounds,

[fol. 1614] Q. Now, can you tell me what Alcoa's production of primary aluminum was in the year 1950?

A. 707,954,000 pounds.

Q. And you drew that figure from the worksheet of AR-44, is that correct?

A. Well, it appears on AR-44. I have drawn it from Exhibit AR-7.

Q. Does the same figure appear on AR-44 under the year 1950?

A. Yes.

Q. Can you tell me with those two figures what the approximate percentage of all aluminum produced by Alcoa was sold? Can you make that computation in round figures? I think it is about 24 percent. You can just check to see whether that is approximately correct.

A. Yes.

Q. That's about right, I think. In other words, that means in the year 1950 Alcoa sold to others about 24 percent of all the primary aluminum they produced?

A. Yes, sir.

Q. About one fourth of it went to others?

A. Yes, generally.

[fol. 1615] Q. What type of customer were these generally, would you say?

A. These are non-integrated domestic customers.

Q. Now, if you look at AR-44, and follow the years from 1950 down to 1960, what would you say generally is the trend of Alcoa production of primary aluminum? What has it been?

A. Alcoa's production of primary aluminum has been up-

Q. Generally upward. To such an extent that by the year 1960 their production was—and would you read that figure for the record?

A. Alcoa's primary production in 1960 was 1,453,970,000 pounds.

Q. And that would appear to be about twice what it was in 1950?

A. Yes, generally.

Q. Is that right?

A. Yes.

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Q. Now, directing your attention to AR-44-A again, where you list Alcoa's sales of primary aluminum, I ask you to tell me from that tabulation how much Alcoa sold in the year 1960.

[fol. 1616] A. 113,732,000 pounds.

Q. Now, could you tell me from a percentage point of view what the ratio is between Alcoa's sales and Alcoa's production in the year 1960?

A. Something less than ten percent.

Q. Something less than ten percent? I compute—about 7.8 percent. Does that sound about right?

A. Yes, sir.

Q. Now, who were these sales made to in 1960?

A. They were made to domestic non-integrated companies.

Q. And I ask you to compare the tonnage or poundage sold by Alcoa to these non-integrated companies in 1960 with what they sold in 1950.

A. The sales were down noticeably from 167 million approximately in 1950 to 113 million pounds approximately in 1960.

Q. Now, if you know will you state what has Alcoa been doing with the bulk of the production.

A. During this period substantial amounts of Alcoa's production went into inventory, due to no other demand for the metal existing.

Q. The question was the bulk of their production. What [fol. 1617] have they been doing with the majority or preponderant portion? They haven't been putting the preponderent portion into inventory, have they?

A. No, sir.

Q. What have they been doing with it?

A. Substantial amounts have been used by Alcoa. There has been an amount sold in foreign countries. And then the amount put into inventory is also of major significance.

Q. Can you tell me how much has been put into inventory, or how much is in inventory?

A. Between 1950 and 1960—in 1950, the inventory of primary aluminum was roughly 46 million pounds.

Q. 46 million pounds? .

A. Yes.

Q. And how much was in inventory in 1960?

A. As of the end of 1960 that had increased to approxi-

mately 335 million pounds.

Q. 335 million pounds. And how would that figure compare with Alcoa's production in 1960? Can you give me a percentage ratio? 335 million to 1,455,000,000?

[fol. 1618] A. Oh, 335 million-25 percent? 20 percent?

Q. Did you compute a rough figure!

A. Well, on the order of 20 to 25 percent, it appears. No, it will be something more than that. I get about 23 percent.

Q. About 23 percent. In other words, the inventory of Alcoa in 1960 was only about 23 percent of their production in that year?

A. Yes, sir.

Q. The bulk of it, again I ask you, was used for what purpose? Alcoa's production. Obviously over a ten year period, if there was only—did you say 20 percent of one year's production, where did all the other aluminum go for the last ten years?

A. The bulk of it was used by Alcoa.

Q. In manufacturing fabricated products?

A. Yes, sir.

Q. Now, I direct your attention to the graph which accompanies AR-44 and I believe on direct examination you testified that the different—perhaps I better ask you to tell me what you said—you called attention to the dotted line which you indicated was Alcoa's capacity, is that correct?

A. Yes, sir.

[fol. 1619] Q. And you called attention to the darker of the two shaded areas, and what did you call that?

A. The darker of the two shaded areas represents Alcoa's primary production used by Alcoa.

Q. Used by Alcoa?

A. Yes.

Q... What is the lighter shaded area?

A. That represents chiefly sales to non-integrated domestic companies.

Q. Now, did you state that the area between the dotted line and the shaded portion represented what? Will you state what you stated that portion was?

The Court: Which shading?

Mr. Melchior: The more thinly shaded portion.

A. The space between the dotted line and the light shaded portion represents metal—well, it represents idle capacity—which idle capacity is available for an demand Alcoa might have for the metal. It represents that portion of Alcoa's production which went into inventory. It represents Alcoa's sales in the export market. It represents also Alcoa's shipments to stockpile.

[fol. 1620] Q. Which of those factors is larger, if any of

them are?

A. I do not know offhand the amount shipped to stockpile.

Q. Could you tell from the graph?

A. The amount shipped to stockpile!

Q. No, I don't mean that, but can't you tell from the

graph which of the amounts you listed is largest?

A. Well, the graph shows that the amount of idle capacity is a significant portion, but I do not know how much of the remainder represents stockpile and how much of it off-hand represents overseas shipments.

[fol. 1621] Q. I see. You can't really tell from this

graph?

A. No.

Q. But you do know that idle capacity represents a substantial part of it?

A. Yes.

Q. So to the extent that there is no production by the facilities, or to the extent that there is or there is not production, active production by the idle facilities, the dark line will move up and down; is that correct?

A. That is correct, sir.

Q. Now, the spread between the dotted line and either of the shaded portions, or the spread between the dotted line and the more darkly shaded portion will vary with the volume of pig and ingot used by Alcoa in its own operation; is that correct?

A. That is correct.

Q. If Alcoa uses more of its own product of ingot on a tonnage and volume basis, the more darkly shaded area would increase? A. Yes, that is correct.

Q. And would close the gap; is that true!

A. Yes.

[fol. 1622] Q. Now, directing your attention to AR-45, Mr. Healy, I understand this tabulation purports to show aluminum pig, ingot or billet to be made available to non-integrated users under the provisions of GSA supply contracts; is that correct?

A. Yes, sir.

Q. And your second column to the left gives the quantity in pounds concerning which there is an obligation on Alcoa; is that correct?

A. Yes, sir.

Q. These are the pounds that Alcoa must make available to whom?

A. To non-integrated users.

Q. Now, is this all non-integrated users of aluminum or merely—is it all non-integrated users of aluminum or merely non-integrated wire and cable companies?

A. It would be all non-integrated users.

Q. As a matter of fact, under this program would it be possible for all this tonnage to go to non-integrated companies who are not wire and cable companies?

A. I would say that would be possible.

Q. Now again with respect to this same column, is there [fol. 1623] any requirement that this tonnage be made available to Small Business?

A. There is provision in the contract that a portion of this must be made available to Small Business.

Q. Do you know what portion?

A. I am not certain.

Q. But you do know that it must be made available to non-integrated companies?

A. Yes, sir.

Q. And this will be regardless of size!

A. Yes, sir.

Q. Now, there was some testimony earlier in the case that some of this hot metal—are you familiar with that term, hot metal?

A. Yes, sir.

Q. That there were some tonnages of hot metal pur-

chased by some of the automobile companies. Would they be non-integrated users of aluminum?

A. Yes, sir.

Q. They would. Now, I direct your attention to AR-46, and this tabulation is entitled "Supply to non-integrating fabricators sales of primary aluminum of the domestic integrated producers." Now, are these non-integrated fabri-[fol. 1624] cators here the same type of non-integrated fabricators that we have been talking about?

A. Yes, sir.

Q. Regardless of the size of the company, as long as they don't make primary aluminum they are non-integrated fabricators?

A. Yes, sir.

Q. And they would include the automobile companies?

A. Yes, sir.

Q. Now, directing your attention to AR-47 and AR-48, AR-47 is primary aluminum purchased in pounds by Rome and AR-48 is the same information in dollars; is that right?

A. I believe that is the reverse, sir.

Q. The reverse? I am sorry. And we will talk about them at the same time if we can. I notice that the first column to the left is entitled "Total primary aluminum sales to non-integrated fabricators by U. S. primary producers." And I again ask you are these the same categories of non-integrated fabricators that we have mentioned with respect to the earlier tabulations?

[fol. 1625] A. Yes, sir.

Q. Now, with particular respect to these two tabulations, AR-47 and AR-48, is this primary aluminum or is this primary aluminum EC grade?

A. This is primary aluminum in total.

Q. In toto?

A. Yes.

Q. Now, would you know what these percentages in the two righthand columns would be if we made the same computation and limited it to sales to non-integrated wire and cable fabricators?

A. No, sir, I do not know.

Q. You don't know what the percentage would be. Would you think the percentages would be higher?

A. Yes, sir.

Q. Would they be materially higher?

A. They would be higher. I don't know how much. I would expect it to be a notable difference, but again I don't know how much.

Q. Do you know what percentage of all Alcoa's primary aluminum is utilized by conductor wire and cable manifacturers?

A. No, sir.

[fol. 1626] Q. Of aluminum?

A. No, sir, I don't.

Q. You have no idea?

A. No.

Q. Now, do either one of these tabulations, AR-47 and AR-48 include Rome's purchase of rod and wire conductor or EC rod and conductor wire and cable?

A. No, sir, they do not.

Q. They are not included in these tabulations. Mr. Healy, I direct your attention to government's Exhibit 447. Are you familiar with that tabulation?

A. No, sir, not especially.

Q. You have not seen it before?

A. I saw it at one time, but I do not recall until I refresh my memory just what is on it.

Mr. Bergson: Mr. Melchior, I think I should advise Mr. Healy that this was not one the original group of charts that you submitted to us. He saw the earlier charts. I don't believe he saw this chart which was submitted to us during the course of the trial.

[fol. 1627] Q. We won't make Mr. Healy analyze it at this time then.

A. Thank you.

Q. Now, Mr. Healy, directing your attention to AR-49—strike that. I won't go into that one. Directing your attention now to AR-50 and AR-51, AR-50 is entitled "Copper and aluminum purchased by Rome," and this I believe is again in dollars, and AR-51 is the same thing in pounds; is that right?

A. Yes, sir.

[fol. 1628] Q. And you arrived at certain percentages, there, devoted to copper generally in the upper 90s?

A. Yes, sir.

Q. Now, I ask you, Mr. Healy, if these same tabulations were shown in feet, would there be any difference in your conclusions as far as percentages are concerned?

A. I have no basis for judging.

Q. You have no basis for judging. Directing your attention now to AR-53—has this one been introduced, Counsel? Offered! Maybe I'm getting ahead of you.

Mr. Bergson: 53 has been offered.

The Court: 53 is in.

Q. Directing your attention to AR-53, Mr. Healy, I wonder if you could explain to me how you arrive at the percent overlap as shown in the far right-hand column?

A. That is the relationship of the-

The Court: Wait just a minute.

Mr. Bergson: Excuse me. Just a minute. The Court: I'm wrong. You are right.

Q. You may proceed.

A. The percentage is the relationship of the first column to the second. There is a percentage for the year 1954, [fol. 1629] \$1,716,000 bears to \$28,912,000.

Q. In other words, the right-hand column is just the ratio

existing between the two middle columns?

A. Yes.

Q. Well, how did you arrive at what should go into the

two little columns?

A. The left-hand column of the two, overlap wire and cable products, covers the Rome production comprising the categories ACSR, weatherproof line wire, and service drop.

Q. Those three categories?
A. Yes, sir.

Q. Made by—

A. Made by Rome.

Q. Made by Rome?

A. Yes.

Q. And Alcoa, or just Rome?

A. These figures relate only to Rome. The second column refers to the total Rome sales of wire and cable products.

Q. Now, why did you select for the overlap wire and cable column ACSR, weatherproof and service drop?

A. This was on instruction of counsel.

Q. I see. You don't know why you did it, or why it was [fol. 1630] done, then.

A. No, sir,

Q. Of your own knowledge?

A. No, sir.

Q. Now, I call your attention to AR-57. This, I believe, you pointed out was a listing of changes in base prices of primary aluminum, E.C., redraw rod, and certain selected cable sizes which you averaged out?

A. Yes, sir.

Q. And your purpose in preparing this—was it to show the extent of the spread in price between the raw material and the end product? Is that right?

A. Yes, sir.

Q. I believe you did state on interfogation that this merely represented list prices, and did not necessarily represent actual market prices?

A. That's correct.

Q. Are you familiar at all with market prices?

A. In a general way, yes.

Q. Can you tell me generally whether the prices set forth here for the primary aluminum are generally consistent with what you understand the market price to be on primary aluminum?

[fol. 1631] A. With regard to E:Cagrade, yes.

Q. With regard to E. C. grade, you feel that the price set forth here does actually represent the market price?

A. Yes, sir.

Q. Now, with respect to E.C. redraw rod, would you say that the price given here for list prices of E.C. redraw rod represent the market prices.

A. For a portion of the period they did, and I don't recall the date now when redraw rod started to be sold at less than schedule. But there was a date when the market did change in that regard.

Q. You can't give us an approximation, can you?

A. I may be off on this, but it seems to me it was early 1957; but I may be off.

Q. Around 19571

A. I think so.

Q. In other words, prior to that year, the redraw prices represented here were actual market prices. And subse-



quent to 1957, you think they do not represent market prices?

A. That is generally true—with the exception—I better

not state that.

Q. No; don't state anything you don't know of your own [fol. 1632] knowledge; that's all I'm asking you. Now, with respect to the market prices for wire and cable—aluminum wire and cable—what would you say with respect to the prices you have set forth here with respect to a comparison between the base price as listed here for wire and cable and the market price?

A. I was not familiar with cable prices prior to 1955. Subsequent to 1955 the cable was so frequently sold at less than schedule price that I cannot make any generalization

other than that.

Q. From 1955, then, down to the end of this chart, it's your information that aluminum wire and cable was sold at less than list prices?

A. Only at times. It sometimes would be sold at schedule.

Other times, less than schedule.

Q. How often was it sold at schedule, to your knowledge?

A. I only know that the thing would go in cycles. I would be informed at times we were selling at schedule, and other times that we were not.

Q. Now, if, as you have informed us, that the pig prices, the pig market price, has been consistent with the listed price here, whereas from 1955 on, the market price for aluminum wire and cable has been most generally below the [fol. 1632a] list price here—what does that do to the spread!

Mr. Bergson: I don't think he said, "most generally." The Court: No, he didn't say that.

Q. What was the term you used?

A. Frequently.

Q. What would that do to the spread?

A. Well, the spread between actual market price and the pig price would be less than shown here. Based on actual market pricing.

Q. Now, during your direct interrogation, Mr. Healy, by counsel, I believe counsel spoke of the—I don't want to misquote counsel here, but what I have written and we can

check the record if it is not correct—that Alcoa has attempted to maintain a studied relationship between these three levels of prices here. Do you recall that comment?

A. I don't believe that was the phraseology.

Mr. Melchior: Do you recall what you stated, counsel, or shall we check the record.

Mr. Bergson: I think I stated they attempt to maintain a relationship, so there would not be a squeeze.

[fol. 1633] Mr. Melchior: Fine; that's satisfactory.

### By Mr. Melchior:

Q. How does Alcoa maintain this relationship so there will not be a squeeze? How does she go about it mechanically, if you know?

A. Alcoa does not establish the relationship, in that she does not control the market price of the cable. I have stated that the price Alcoa realized for cable was less than scheduled price frequently due to meeting competition. It would be the competitive market factor which would establish the spread.

Q. I am not quite sure how I see any control there. You say Alcoa has no control over the market price of the cable, is that right?

A. Let me clarify that.

Mr. Bergson: I don't think I said Alcoa had control.

Mr. Melchior: No.

Mr. Bergson: I said it attempted to maintain the spread.

Mr. Melchior: Well, I was asking the witness to explain how Alcoa does this. I'm interested.

[fol. 1634] The Witness: Alcoa does not control it.

Q. Does not control what?

A. The spread between the market price of cable and the price of primary aluminum.

Q. Well, I believe Counsel used another phrase, which I noted down, about the undulating spread, and you responded by saying "Yes, sir." Now, would you explain this undulating spread that he spoke about and you agreed to. I am not sure I understood the import of your testimony.

A. I believe the conversation at that time was with relation to this chart which shows the spread in published

price. The conversation that we just had most recently is with relation to market price.

Q. I am talking about both market price and the raw material price, the pig and the E.C. rod. These are the three

factors which determine the spread.

A. Yes, sir. This chart shows that there has been a general increase in the spreads shown. However, it is not a constant, the increase in spread is not at a constant rate. At some points in the table here you will see that the spread has declined and then you will see that it has again widened. [fol. 1635] Q. Yes, I can see that, and that is why I amasking that I don't quite understand what control Alcoa exercised over this spread?

The Court: They said they didn't exercise any.

Mr. Melchior: Well, I understood counsel to say that

they made a steady effort to keep this spread.

The Court: He said something about having a pricing policy so that they wouldn't be accused of taking control. The statement was made to me. You can put counsel on to explain that. I don't want it explained. I think all that this chart shows is their pricing policy. They admit, maybe we can clear it up, they admit that at all times on competition that they would vary from their pricing policy to meet the competition of others. I don't know that there is anything complicated about it. That is my understanding of it.

Mr. Melchior: Well, I am not sure I understand how they

do it, but I am not sure L can get it by testimony.

[fol. 1636] The Court: They put it right down on a piece of paper. That is how they did it. They set up a pricing list and put it on the list.

Mr. Melchior: But each of these is apparently separate.

Q. Are these not separate lists? For instance, your pig list goes out at one time with a price noted in it and would the E.C. ingot pricelist come out at the same time or a different time?

A. Generally the same time.

Q. Generally the same time. How about the wire and

cable prices?

A. They would on occasion come out at the same time and there would be also wire and cable changes, which does not coincide. Q. Does the change in aluminum pig and E.C. rod generally result in the change of the price of aluminum conductor?

A. It has always been that way, but there are exceptions, also.

Q. If the price change of pig is down, would it be likely to expect that the price of wire and cable would be down with that change?

[fol. 1637] A. Yes, sir.

Q. To your knowledge does the price of copper wire and cable have any influence on aluminum wire and cable prices, if you know?

A. I can't testify.

Mr. Melchior: Your Honor, I would like to go into AR-58, but I am a little reluctant to, because I don't know whether I will come out with any more than we already have on that.

The Court: Well, let's try it.

Q. Mr. Healy, I direct your attention to AR-58, and I have a great deal of difficulty in understanding how the unknown figure there, which is represented by 11 million and some odd pounds, how that, or a part of that was allocated to Rome, if I understand the chart correctly. Perhaps you can explain that to me, Mr. Healy.

A. Sir, I can't shed much light on that. I was advised of the portion of that figure which represented—I was advised of this 17,059 pounds, which is a portion of this

eleven million pound figure.

Q. You don't know it of your own knowledge, then, I see.

Mr. Bergson: I suggest-

The Court: Gentlemen, can't we clear that up. This [fol. 1638] is taken directly from Hemeter's testimony.

Mr. Bergson: Yes, sir, and from Rolston's testimony. And if counsel needed any opportunity to clear it up, he might have done it through Mr. Rolston.

The Court: That is where it comes from.

Mr. Melchior: Yes, it is from Mr. Rolston. I understood Mr. Hemeter's testimony quite well. No further questions.

Mr. Bergson: I just have a few questions on redirect.

### Redirect examination.

### By Mr. Bergson:

Q. Mr. Healy, on cross-examination you asked if you could account for the 2 per cent increase in Alcoa's capacity shown in Exhibit AR-7, in the period between 1959 and '60. You also said that in late '59 or early '60, additional capacity was added at Point Comfort. Could that 2 per cent be accounted for by the Point Comfort additional capacity!

A. No, sir. Let me correct that. These changes in that

general area—ves, it could be.

[fol. 1639] Q. Now, in testifying concerning Defendants' charts AR-44 and AR-44-A, Mr. Melchior brought out that in 1950, 24 per cent of Alcoa's capacity was sold to non-integrated producers and in 1960, 7.8 per cent were sold to non-integrated producers. Was that because Alcoa refused to sell any to any of the non-integrated producers?

A. No, sir.

Q. Could it have been because of the fact that between 1950 and 1960 additional primary metal suppliers came into beging and competed with Alcoa for that market?

A. It could very well be the case.

Q. In addition, in his cross-examination, Mr. Melchior pointed out that you had 23 per cent of 1960 production in inventory and your chart indicates that, or the graph indicates that your production and capacity or particularly your capacity exceeded your production. If Alcoa had orders for more aluminum would it have used that additional capacity?

A. It would have been delighted to.

Q. Would you say that in the light of what appears on Chart AR-44 that aluminum is in short supply?

A. No, sir. There is ample supply and ample idle capac[fol. 1640] itv.

Q. And would it be, in your opinion, would it be difficult for any non-integrated fabricator to obtain metal?

A. No, sir, it would not be.

Q. Now, in his cross-examination, Mr. Melchior also referred to charts 47 and 48, and he asked you whether or not those charts included Rome's rod purchases; do you recall that question? Let me show you one of the Govern-

ment's charts, if I can find it. In invite your attention to Government chart 448 and ask you to look at the line which is entitled "Total production, use, purchase and sales of aluminum E.C. and re-draw rods by Rome Cable Corporation 1953 to June 30, 1959." How much E.C. redraw rod did Rome purchase in 1955?

A. None.

- Q. How much E.C. redraw rod did Rome purchase in 1956?
  - A. 151,000 pounds.
  - Q. How much did it purchase in 1957?

A. Four hundred pounds.

Q. How much did it purchase in 1958?

A. None:

[fol. 1640a] Q. How much of a difference do you think that would make in your computation?

A. It would be insignificant.

Q. Would it show up?

A. It probably wouldn't even show up.

Mr. Bergson: No further questions, your Honors

[fol. 1641] Recross-examination.

### By Mr. Melchior:

Mr. Melchior: I think I have just two questions, your Honor.

Q. Directing your attention to AR-53—this is just a point of information, Mr. Healy. You indicated that the products given to you for overlap wire and cable, I believe, were ACSR, weatherproof and service drop.

A. Yes, sir.

- Q. You see this yellow board behind you, where they talk about overlap products?
  - A. Yes, sir.
- Q. If I can see that far, I probably would see a product known as all aluminum cable. Is there one on there?
  - A. Yes, sir.
- Q. Was there any reason why that particular product was not put in here?

A. It was included. If I didn't make that clear, I will correct that now.

Q. Oh, it was.

A. Yes.

Q. I see. Fine. One more final question. And it goes [fol. 1642] back to AR-58, this tabulation which I have a great deal of difficulty in understanding. I believe you stated, Mr. Healy, that the first part of it, the tabular material which totals up to 78 and some odd million pounds—is that supposed to be based on Mr. Hemeter's study which is AR-29?

A. Yes, sir, it was.

Q. As I recall Mr. Hemeter's testimony, he indicated that AR-29 was based upon potential business reports. Do you recall?

A. Yes, sir, I recall that.

Q. I asked him about several other report forms. One in particular was a lost business report. Do you recall that?

A. Yes, sir.

- Q. Do you recall what he stated about the lost business report form?
- A. I believe he stated that the lost business report form was not involved in this tabulation.
  - Q. Did he make any other comment with respect to those?

A. I don't recall, sir.

Q. He wasn't responsible for the lost business report forms, was he? Didn't he indicate that someone else had [fol. 1643] responsibility for that?

A, Yes.

Q. Didn't he indicate that this lost business report form had been abandoned because the salesmen didn't like to turn in information on lost business?

A. There was something like that.

Q. Do you recall that testimony?

A. Yes.

Q. Well, now, I note at the bottom of AR-58 that the data says summaries of Alcoa's lost business report.

Mr. Bergson: Potential business reports.

Mr. Melchior: I don't see the word potential.

The Court: It is.

Mr. Melchior: It is not on mine. It is not on the copy I

secured. Mine reads summary of Alcoa's lost business reports and Rome's sales orders. This is the copy I got from defense counsel. This explains the dillema we have been facing.

Mr. Bergson: I will give you this and I am sure now you

[fol. 1644] will have no more problems.

Mr. Melchior: Well, I am not so sure of that, comsel. May it please the Court, is this the copy the Court has?

The Court: I guess so. The exhibit in evidence I think has "Summaries of Alcoa's potential business reports, Rome's sales orders."

Mr. Bergson: Here it is.

Mr. Melchior: This is a different form than the one I had earlier received from counsel.

The Court: I don't know a blessed thing about it,

Mr. Melchior: No further questions.

George Day, called as a witness on behalf of the defendants being first duly sworn, testified as follows:

Direct examination.

## By Mr. Bergson:

Q. Mr. Day, will you please state your name and address for the record.

[fol. 1645] A. George Day, Pittsburgh, Pennsylvania.

Q. By whom are you employed!

A. Aluminum Company of America.

Q. In what capacity are you employed?

A. Assistant manager of the commercial research division.

Q. How long have you been assistant manager of the commercial research division?

A. Slightly over two years.

Q. And prior to that what position did you hold?

A. Prior to that I was chief analyst in that division for one year. Prior to that, senior market analyst in that division. I have been in the commercial research division for ten years.

Mr. Bergson: At this time, your Honor, I would like to offer Defendant's Exhibit AR-4 for identification, which was marked during the cross-examination of Dr. Martin and is in our chart book, and—

The Court: 1958.

Mr. Bergson: 1958. This is a report furnished to us by the Business and Defense Services Administration of the [fol. 1646] Department of Commerce in response to a request from us that in compiling the statistics of primary producers or affiliates, they include as the legend indicates those former non-integrated producers which subsequently became parts of integrated producers as part of those integrated producers for all of the years. This we wanted as a basis for the charts that we are about to offer, because it is our view that in order to judge the effect of this acquisition on independents, as the government contends, you have got to consider the independents as they exist today and not as they ceased to be independents during the course of the years. And I offer this in evidence at this time.

Mr. Melchior: We object, your Honor. We object on the basis of the fact that this tabulation includes as primary producers for all the years 1954 to 1960 not only the primary producers but the companies they acquired some years after 1954. In particular it includes with Alcoa, for [fol. 1647] the year 1954, Rome Cable Corporation which was not acquired until 1959. It includes U. S. Rubber, which was acquired by Kaiser in 1957, for all the years, and it includes Southern Electrical which was acquired in the year 1957 by Olin for all of those years.

Mr. Bergson: And it also includes, your Honor, Anaconda, which became integrated by becoming a primary producer on its own.

Mr. Melchior: In what year?

Mr. Bergson: 1955 I think it was.

Mr. Melchior: I was getting ready to make this point before you interrupted, counsel.

Mr. Bergson: I beg your pardon.

Mr. Melchior: So we are attempting to show the trend here based upon a combination of companies which in fact did not exist for the years 1954, 1955 and 1956, and to us this is a complete distortion and voids the tabulation. [fol. 1648] Mr. Bergson: Your Honor, in order to determine the effect of Alcoa's acquisition of Rome to use past statistics it seems to me that the companies have to be put in the same position that they were at the time of Alcoa's acquisition of Rome. That was, what we made an effort to do here. The government in its charts presented statistics as they saw them. We are presenting things here as we see them. The question it seems to me that has to be determined is whether Alcoa's acquisition of Rome which took place in 1959 has had any effect so far as any independents are concerned, on independents which were in existence at that time. Now this is what these charts will show.

The Court: When you say "these charts," are there some

Mr. Bergson: This chart is merely the basis for charts that are to follow.

Mr. Melchior: That's right.

Mr. Bergson: That's why I offered it in evidence at this time, so that I could provide foundation for the subsequent [fol. 1649] charts. This chart was prepared by a government agency.

The Court: Let's see if I understand what it says. In 1954 there was a shipment of wire by the primary producers or affiliates. That means included in that both Rome and Alcoa.

Mr. Bergson: No, the total figure includes everybody in the industry. That hasn't been changed. That is the way this thing was put out by the Department of Commerce in the first instance. What has been changed here is that in the column "Primary producers or affiliates" there have been taken out of the other producers column and put into the primary producer or affiliate columns those companies which were merged or became integrated prior to the acquisition of Rome.

Mr. Melchior: In other words, your Honor—and this is very important we think—because there will be about [fol. 1650] seven tabulations following which are subject to the same defect. There is a column here—and incidentally I will say we don't have any problem with the figures. It is the way they are being used. If you look at the column

"Other producers," in 1954, there are not included in that column, and in our view there should be at that time, the three merged companies which were not merged until the years 1957 and 1959 respectively. They should be included in that 14 percent figure there rather than as primary producers, because in the year 1954 Rome Cable was independent of a primary producer. Southern Electric was and so was the U. S. Rubber facilities. They were not a member of the integrated organization in 1954; did not become a part of them until three years later. I can see how in some cases it might be fair to reach back into the past and perhaps do this, but not when you are trying to show a trend, as counsel will attempt to show in the very next tabulation. [fol. 1651] He will show a trend, and he shows the trend by including the totals of the non-integrated merged companies as part of the integrated companies three years before it actually took place.

Mr. Bergson: The trend we are trying to show will be in three charts that begin with the year 1958. Those charts are Exhibits 63, 64 and 65; if you will look at those, they start out with the year 1958. That was the last full year prior to the merger, and that we figure is the proper take-off point for a determination as to what has happened as a result of this merger. Now in the other charts our main purpose is to show what position Alcoa and Rome held in this industry, and you will find there in those charts that

Alcoa and Rome are broken out separately.

Mr. Melchior: I think this main problem will show in AR-59, which is the next one. You can look at that.

[fol. 1652] The Court: Just a minute, Mr. Melchior. Apparently, at a quick look at these other three exhibits, they only do go back to 1958, so that your objection to this chart

previous to that is unimportant, isn't it?

Mr. Melchior: No, it isn't, your Honor. Let's look at AR59, AR60 and AR61, which are the next three. We have an additional objection for this which I will register when we come to it. But you can look at the next chart and probably that is the reason they were put in this order. You will note we have 1954 down to 1961. And they have the third column entitled "Primary producers or affiliates" and they show a percentage from 88 down to 86. Some undulations on the way. In the year 1954, 1955 and 1956

they have included not only the primary producers but also the companies that merged, which they did not merge until 1957.

The Court: I understand that, all right. Assume they do.

[fol. 1653] What's the harm?

Mr. Melchior: Because it will show an entirely different trend if you pull them out, your Henor. If you pull Rome, U. S. Rubber and Southern Electrical out of the years 1954, the year 1955 and the year 1956, those percentages will change and the trend counsel apparently is going to try to show will not be there. I am not sure it is there anyway, but it will be appreciably less.

Mr. Bergson: Will there be any change in your view in the position of Alcoa and Rome, as shown in those charts,

as a result of the way-

Mr. Melchior: I don't think those two columns will be affected, no. But primary producers I think will definitely be affected, and I haven't computed it. This tabulation was objected to some time ago on this very basis. In fact, there was a series of seven of them, so there was an opportunity for counsel to correct.

[fol. 1654] The Court: The thing I am getting at—what this is, if I understand it right, is a combined—beginning in 1954, a combined—this figure for bare wire for instance—of the primary producers plus the affiliates with which they were later merged.

Mr. Bergson: That's right.

The Court: Well-

Mr. Melchior: Why was this done? Why is it necessary? The Court: I don't care why it was done. I am just trying to find out what was done first. We can argue why—because of course the government is going to offer charts favorable to themselves. The defendant is going to offer charts favorable to themselves. I am not disturbed about the why, if I can get the facts, I will worry about the why. All right. I can understand that. For instance, in 1954 they added, I suppose, Rome to the Alcoa figure.

[fol. 1655] Mr. Melchior: Not, to the primary producers.

The Court: To the primary producer figure.

Mr. Melchior: That's right. They added U.S. Rubber.

The Court: Yes, U.S. Rubber. Mr. Bergson: And Anaconda. Mr. Melchior: And Anaconda. And Anaconda became a primary producer probably in the year '55.

The Court: This really shows what they would have done

if they had been merged at that time.

Mr. Melchior: Yes, you are right.

The Court: All right. I overrule the objection. And all it is is something I can do myself, putting it together, and adding it together.

Mr. Bergson: I don't think you could have done it, your Honor, because I don't believe the statistics were available on an individual basis.

Mr. Melchior: You asked BDSA to do this, Counsel?

Mr. Bergson: Yes.

The Court: I think I will receive it. It is kind of hard to figure out on a number of these charts what to do with them after I get them. But if I could understand the basis of them I think I can evaluate them later. But this particular chart is adding the figures for the companies that were later merged to the primary producers, which in fact I suppose they are going to argue that they represent a condition which would have existed in 1954.

Mr. Bergson: If they had been merged.

The Court: If they had been merged.

Mr. Melchior: We feel as long as the figures for the individual companies are shown, as they do in the case of Alcoa and Rome in '59, that would be so, but if the defense tries to show trend based on these figures, we think no [fol. 1657] conclusion may be drawn.

The Court: You may be entirely right about that. I certainly think that there are several of these charts that I am not going to go for on the evidence so far, including some by the Government and some by the defendant. So don't be disturbed about that.

Why don't we take a short recess.

Mr. Bergson: Have you received this exhibit?

The Court: I will receive this exhibit.

Mr. Melchior: AR-4.

(Defendants' Exhibit AR-4 for identification received in evidence.)

(At this point a short recess was taken after which the trial was resumed.)

Mr. Bergson: May it please the Court, before we resume with Mr. Day's examination, I would like to apologize to the Court and to Mr. Melchior for the mix-up on the document that was based on the potential business reports. Apparently we furnished the Government with two sets. One set potential business reports and one set lost business [fol. 1658] reports. I think it is our fault that this mix-up occurred.

The Court: I noticed it once before in one of Mr. Melchior's questions, and I was going to call him on it. Then I decided I wouldn't.

Mr. Bergson: I am glad you didn't, because it was my fault.

The Court: OK.

By Mr. Bergson:

Q. Mr. Day, I invite your attention to Defendants' AR-59 for identification and ask you whether you prepared that exhibit or whether it was prepared under your direction and supervision?

A. Yes.

Q. Would you please tell the Court what this exhibit is?

A. This exhibit shows the shipments of ACSR and aluminum cable, bare, both for the total industry and also for primary producers or affiliates, including merged companies in the pattern that was explained prior, and all remaining producers as a group. And also shows Alcoa's shipments and Rome's shipments separately in the fourth and fifth [fol. 1659] columns. The percentages shown—

Q. Don't answer that now.

The Court: Just a second. You are on 59?

Mr. Bergson: Yes, sir, AR-59. Before offering AR-59, your Honor, I would like to make a statement, that in offering these exhibits which relate to aluminum insulated wire and cable, not this particular one, and subsequent

exhibits which relate to aluminum wire and cable generally, we are offering these materials, not because we believe that the line of commerce is the proper line of commerce, because we are attempting to meet the Plaintiff on its own ground with these exhibits, but our offering them is to be in no way taken as a concession that we admit that these are lines of commerce.

· We do admit that the ACSR and aluminum cable, bare,

is a separate line of commerce.

With that statement I offer Defendants' Exhibit AR-59 for identification.

[fol. 1660] Mr. Melchior: Your Honor, the government objects to this on the same basis that we objected to the earlier one.

The Court: Just a moment. I think probably I would have —I think at least I would be in a little more intelligent position to understand if you defer your objecting and you defer your offering until we have an explanation of it, so that we have the explanation. All right. I will defer ruling on it. The offer may stand. I will defer ruling on it until your witness explains it to me.

# By Mr. Bergson:

- Q. Now, Mr. Day, this chart was prepared by you at my request, was it not?
  - A. Yes.
  - Q. Did I tell you why I wanted it prepared this way?
  - A. I believe so.
  - Q. Can you state the reason?
- A. The purpose was to try to show the trend from the year 1954 through the last full year that we have data on, 1961, the trend for the group of companies known as other [fol. 1661] producers, which would be the non-integrated producers today.
  - Q. The ones that remained independent?
- A. That's correct. Those same companies back to the year 1954. The primary-purpose was to show that particular column and also to compare Alcoa and Rome separately with the total industry.
- Q. And also to show Alcoa and Rome's position as the years went on?

A. Oh, yes, naturally.

Q. Now looking at the column for Alcoa in 1954, what percentage of the market did Alcoa have?

A. 48.4 percent.

Q. And in 1961 Alcoa had how much?

A. 26.1 percent.

Q. And in 1958, the last full year before the acquisition, how much did Alcoa have?

A. 32.5 percent.

Q. And in 1959?

A. 31.4 percent.

Q. And in 1960?

A. 30.6 percent.

The Court: That is a percentage of what?

[fol. 1662] Mr. Bergson: That is the percentage of the total. That's the first column.

The Court: So that Alcoa's share alone in 1954—or is it Alcoa plus Rome in 1954?

Mr. Bergson: No, that is Alcoa alone in 1954. Rome alone has been shown in the last column.

The Court: I see.

Mr. Bergson: If I might testify a little bit myself here. The Court: I will take your statement.

Mr. Bergson: Maybe I can clarify the purpose of this chart. What we wanted to portray here; and the only way we thought that it was proper to portray it here was when the government made a division, assuming that there was no competition among the primary producers, and lumped the primary producers in one group, and the non-integrated producers in another group, that in order to show what the trend is so far as the independents as they exist today are -that you had to take out of the figures for 1954, 1955. [fol. 1663] 1956, 1957 and 1958 those companies which became affiliated, or became integrated, which was Anaconda's case. The main purpose of this chart is to show how drastically Alcoa's share has declined since 1954; how minimal Rome's share always was; and how Alcoa has continued to decline since the merger. It also shows that of the remaining independents, this is what their position was over the period of years. Now, we weren't trying any sleight of hand or anything like that. We just felt this was the only

proper way to present this case with the fact of the merger

in 1959. Do I make myself clear?

The Court: I think so. The other producers in 1954, if you eliminated Rome and the Aanaconda affiliate, whatever other one there was had 11.9.

Mr. Bergson: That's right,

The Court: And now those same producers, other producers—

[fol. 1664] Mr. Bergson: The other producers, your Honor the none-integrated producers included within those nonintegrated producers from 1954 to date are the South Wires, the Nehrings, the Central Cables, the Essexes, the General Cables, companies of that kind. Those companies remained constant throughout the period 1954 to 1961. What we did was to break out of the other producers category and put over into the integrated category those producers which subsequently became integrated, but so that your Honor could see the picture so far as Alcoa and Rome was concerned, we had separate columns for Alcoa and Rome. They are included also in these primary producers and affiliates column. Alcoa is in there twice. But the percentage is the percentage to the total which has remained the same, and this is the same totals the government used in their charts except they don't have 1960 or 1961 or 1954.

The Court: I think I understand.

# [fol. 1665] By Mr. Bergson:

Q. Now, Mr. Day, with that explanation I don't know whether I have left anything for you to testify to. Do you agree with what I said! Well, so far as Alcoa and Rome are concerned, what does this chart show?

A. So far as Alcoa and Rome-

Q. Right.

A. Individually are concerned?

Q. Individually and collectively. Individually, first.

A. In the case of Alcoa, since the year 1954 through 1961, Alcoa's participation has declined. Rome I would say generally the same thing, although there have been, as you call them, undulations.

Q. Now let me ask you this. In 1959, the first year, nine months of which were after the merger, and 1960 and 1961

which were after the merger, did Alcoa and Rome's share combined decline from their combined share for 1958?

A. Yes.

[fol. 1666] Mr. Bergson: Do you want me to handle all of these before I offer any of them?

The Court: No. You can offer this and I will hear Mr. Melchior about it.

Mr. Melchior: Well, the Government objects to this, your Honor, on the same basis that it did object to AR-4 in the previous tabulation, on the basis that as the witness stated, he was instructed to show a trend, and he used the word "trend" and he mentioned specifically trend of other producers, and, of course, by the same token, if he is showing a trend of other producers, he would have to show the trend of the primary producers because the two added together give you 100 per cent. We think the premature addition of the shipments of companies two or three years before they actually became a part grossly distorts any trend that may be shown.

We will not object to the Alcoa and the Rome columns, but we do object to using the primary producer column and the other producer column for the purpose of showing a trend. And the witness has said that he was instructed

[fol. 1667] to prepare it for that purpose.

The Court: I think I will overrule the objection. In its valuation you may be right, but it seems to me it is not of too much importance, anyway, because the question there is the restraint of competition. Of course, Alcoa's history as shown on this chart and Rome's history as shown on this chart and bears on that subject.

Mr. Bergson: Your Honor, I think on the subsequent charts we will clarify this, and this is the very reason we

have the subsequent charts.

The Court: All right. I will receive it.

(Defendants' Exhibit AR-59 for Identification received in evidence.)

# By Mr. Bergson:

Q. Now, Mr. Day, I invite your attention to Defendants' Exhibit AR-60 for identification and ask you whether this chart was prepared by you or under your direction and supervision?

A. Yes.

Q. And will you please describe this chart to the Court? [fol. 1668] A. This chart shows shipments of aluminum insulated or covered wire and cable, total industry figures for the years, in each of the years '54 through '61. Also shows for primary producers or affiliates including merged companies as a previous exhibit, in the pattern as previously exhibited, and also the shipments for each of the years of 1954 through '61, for the remaining independent producers, the same procedure as the previous chart. It also shows the shipments in each of the years '54 through 1961, for Alcoa alone; and also shows the shipments for Rome for the years '54 through '61—

Mr. Bergson: Now do you wish me to question him before I offer this, Your Honor, as we did the last one?

The Court: Yes, I think so.

Q. Now, Mr. Day, with respect to Defendants' Exhibit Ar-60 for identification, looking at the column for Alcoa, what does it show for Alcoa's percentage of business from the year 1954 to '61?

A. I didn't hear all that question.

Q. What does it show?

A. What does it show?

[fol. 1669] Q. Regarding Alcoa's participation of the buisness.

A. The year '54 Alcoa's participation was 10 per cent; and in the year 1961, Alcoa's share was 7.3 per cent. Indicating a decline.

Q. Now, I notice, however, that in 1959, which was, three months of which were prior to the acquisition, Alcoa had 12.2 per cent, which is an increase over 1954. Since the acquisition what does the chart show?

A. A very definite decline.

Q. And on the part of Rome Cable?

A. Since '591

Q. First, from '54 to '61.

A. In 1954 Rome had 6.9 per cent participation. In '61,

5.7 per cent. On the basis of that a slight decline.

Q. Now, if you were to add Alcoa and Rome together, for the year 1958, which was the last full year prior to the acquisition, what percentage would Alcoa and Rome have?

A. 16.3.

Q. And in 1959, nine months of which was after the acquisition, how much would Alcoa and Rome have?

A. 16.6.

[fol. 1670] Q. And in 1960?

A. 14.8.

Q. And in 1961?

A. 13.0.

Mr. Bergson: Now, before we get on to the other integrated companies, I offer Defendants' Exhibit AR-60.

Mr. Melchior: The Government objects to this tabulation on the same basis that it objected to AR-59 and AR-4, on the ground that there has been a premature inclusion of the merged companies in with the integrated companies, and thus distorts any possible showing of trend.

The Court: I will overrule it. I will receive it.

(Defendants' Exhibit AR-60 for Identification received in evidence.)

# By Mr. Bergson:

Q. Now, Mr. Day, I invite your attention to Defendants' Exhibit AR-61 and ask you whether that exhibit was prepared by you or under your direction or supervision?

A. Yes.

[fol. 1671] Q. Can you describe that exhibit?

A. This shows the shipments of alumnium conductor wire and cable which actually is the sum of the two previous chart products, the ACSR and aluminum cable, bare, and the insulated or covered aluminum wire and cable.

On the same pattern as the two previous exhibits, for each of the years 1954 through 1961, showing in the first column the total shipments by the industry; in the next column, shipments by the primary producers or affiliates including the merged companies, as the same method in the

two previous exhibits, and the remaining independent or

non-integrated producers for each of those years.

Also, for Alcoa, the combined shipments 1954 through '61, this is for the, if I may call them, product lines—the ACSR and aluminum cable, and the insulated, for Alcoa alone.

And the last column, for Rome alone, for each of the

years '54 through '61.

- Q. Now, looking at the column, headed "Alcoa, what is Alcoa's percentage, what was Alcoa's percentage of the market in 1954?
  - A. 42.8 per cent.
- Q. And in 1958, the last full year, prior to the acquisition?
  - A. 27.8.

[fol. 1672] Q. And in 1959, nine months of which was after the acquisition—

A. 26.9.

Q. And 1960?

A. 25.4.

Q. And 1961?

A. 23.5.

Q. And for Rome?

A. In which year, sir?

Q. From 1954.

A. 1.1 percent in 1954.

Q. And in 1958?

A. 1.3 percent.

Q. And in 1959 ?-

A. 1.5 percent.

Q. In 1960?

A. 1.2 percent:

Q. In 1961.

A. 1.3 percent.

Q. Now, what was the combined share of Alcoa and Rome in 1958, the last full year prior to the acquisition?

A. I believe that would be 29.1.

Q. And in 1959?

[fol. 1673] A. 28.4.

Q. And 1960?

A. 26.6.

Q. And 1961?

### A. 24.8.

Mr. Bergson: I offer Defendant's Exhibit AR-61.

Mr. Melchior: The government objects to AR-61 on the same basis it has stated with respect to AR-59.

The Court: I will overrule the objection and receive the

exhibit.

Q. Now, Mr. Day, I invite your attention to Defendant's Exhibit AR-62 and ask you whether that exhibit was prepared by you or under your direction or supervision.

A. Yes.

Q. And would you describe that exhibit to the Court?

A. This exhibit is entitled "Post-acquisition growth of non-integrated producers of ACSR and aluminum cable bare," and shows for each of the years 1958 through 1961 the same shipment data as shown in—I believe that would be Exhibit AR-59—for the total industry for the primary [fol. 1674] producers or affiliates, including merged companies for the other independent or non-integrated producers, the same pattern shown before, and for Alcoa and Rome as a combined number, and also this chart includes a column for each of those groups indicating the percentage change from 1958.

Q. Now, Mr. Day, in 1958 to your knowledge had Ana-

conda become integrated?

A. I believe so.

Q. Had Kaiser acquired U.S. Rubber?

A. Yes, sir.

Q. Had Olin-Mathison acquired Southern Electric?

A. Yes.

Q. So that in 1958 the only independent company that is not included with the independent companies is Rome?

A. Yes, sir.

Q. Now, taking 1958 as the base year, will you tell us what has happened to the combined Alcoa-Rome share of the market since 1958.

A. Well, taking the percentage participation column in 1958 the combined figure was 32.8 percent. In subsequent [fol. 1675] years it declined to 26.1 percent participation, in 1961.

Q. With what in 1959 and '60? I don't want to let you shortcut anything.

A. 32.1 percent in 1959. 30.7 percent in 1960.

Q. A steady decline, without undulation?

A. Correct.

Q. Now let's look at the column called "Other producers." They had what percentage participation in 1958?

A. 13.4 percent.

Q. And in 1959?

A. 16.3 percent.

Q. And in 1960?

A. 16.2 percent.

Q. And in 1961?

A. 13.3 percent.

Q. Now with Alcoa's share having declined between 1960 and 1961, and the other producers shares having declined between 1960 and 1961, who gained the advantage percentagewise?

A. The other primary producers.

Q. The other primary producers other than Alcoa? [fol. 1676] A. Other than Alcoa.

Q. Does this indicate to you that there may be competition between Alcoa and the other primary producers?

A. Yes.

Q. Now, taking the column entitled "Percentage of

change," how was that calculated?

A. Well, it was the same for all of the columns, of course. The tonnage shown was—let's take 1959 versus 1958 in the total industry column. I think this would express it. But the 1958 tonnage of 175 million pounds was divided into 197 million pounds, to indicate the—what do we call it in arithmetic?

Q. Gross change.

A. 12.5 percent, or in other words, a 12½ percent increase over the volume for 1958.

Q. Now, in the primary producers or affiliates column, what does that 8.8 mean?

A. That indicates that the shipments in 1959 were 8.8 percent greater than the shipments in 1958.

Q. And for the other producers?

[fol. 1677] A. The 36½ percent increase over the 1958 shipments.

Q. And Alcoa-Rome?

A. 10 percent over their 1958 shipments.

- Q. Now let's take 1960. 1960 shows for the total production a 5.3 percent increase over 1958; is that how that is determined?
- A. That's correct. 1960 tonnage is 5.3 percent greater than the tonnage in 1958.
  - Q. And the share of the primary producers?
  - A. Is 1.8 percent over their 1958.
  - Q. And the other producers?
  - A. 271/2 percent greater.
  - Q. And Alcoa?
  - A. One and a half percent less than 1958.
  - Q. Now, 1961-
- A. Total industry, 33.7 percent over their 1958 shipments. Primary producers or affiliates, 33.9 percent over their 1958 shipments. The other non-integrated producers, 32½ percent over their 1958 shipments. Alcoa-Rome shipments, 15 percent over their 1958 shipments.

Mr. Bergson: I offer Defendant's Exhibit AR-62. [fol. 1678] Mr. Melchior: The government objects to this document, your Honor, on the basis of the fact that it is entitled "Post-acquisition growth of non-integrated producers of ACSR and aluminum cable bare." And they proceed to begin with the year 1958. We submit that 1958 was the year prior to the merger rather than the merger year, for the post-merger year, and secondly that by including Rome with the integrated producers for the year 1958, and not including Rome with the other producers in that year, all the trends and percents are completely inconsistent with what the facts would be. I think it can be readily seen that if the year 1959 were used as a base instead of 1958, a number of the pluses would become minuses. But we submit that this chart in its present form distorts the factual situation as it existed in 1958.

Mr. Bergson: Your Honor, I don't see how it is possible to portray a situation such as this unless you take the year [fol. 1679] prior to the merger, because that must be the take-off point to ascertain what has happened since the merger. If you didn't have that year you would be comparing something against nothing.

Mr. Melchior: Your Honor, we submit the year of the

take-off point should be the year of the merger, because—as showing a post-merger trend—

The Court: How could you compare what happened after the merger unless you used some comparing point prior

to the merger?

Mr. Melchior: You can take the year of the merger. You have two entities and combine them all in the year of the merger. But to take the year prior to the merger and attempt then to indicate that Rome Cable in 1958 was an integrated company, which she was not, and not include her in with the other companies, which she was, is a distortion.

The Court: I am not so certain about the last. But it [fol. 1680] seems to me if you had to compare the situation after the merger, which occurred April 1st, 1959, you would have to take some point prior to the merger to use as a basis of comparison. How could you compare it with what happened after the merger unless you used something that happened before the merger as a point of comparison? [fol. 1681] Mr. Melchior: Now if the defendants desire to use the year 1958, all they have to do is treat Rome as an independent company, not as a merged company.

The Court: I say there may be some substance to that part of it but I don't see any substance to the other part. It seems to me that you have to use a point before the merger to compare with what happened afterward as a basis of comparison. So that I think '58 alright there to use. But the other one, you say that by including Rome in this column of primary producers or affiliates that that distorts

the whole?

Mr. Melchior: In the year 1958, because she was not a primary producer in the year 1958.

The Court: Yes, I understand.

Mr. Bergson: We were trying to construct a situation that would make a proper basis for comparison. Now you got to compare—it seems to me, this whole dichotomy that the government makes in this industry seems to be without any foundation anyway, putting the independents on the [fol. 1682] one side and the integrated producers on the other side.

The Court: It seems to me in the whole case the government overlooks what to me is very obvious, that there is a

very definite, sharp vigorous competition between these integrated companies. And I though of that in your charts, but that goes again to the weight of your chart.

Mr. Bergson: What we are trying to show here, Your Honor, is what happened to the rest of the industry. Now if you make Rome a part of the rest of the industry in '58 and it is not part of the industry in '59, you got a cockeyed chart.

Mr. Melchior: Your Honor, we have no argument if they are going to use Rome as part of Alcoa in 1959 and subsequent years.

Mr. Bergson: We did.

Mr. Melchior: But they shouldn't be part of Alcoa in '58, because they weren't. And if they were removed from the integrated column in '58, just that one year, over to the other producer column, I think the figures would be entirely [fol. 1683] different.

Mr. Bergson: But the chart would not properly portray.

The Court: It wouldn't be comparative then.

Mr. Bergson: That's right.

Mr. Melchior: Why wouldn't it?

The Court: Because you would be comparing after '58 with Rome and Alcoa together, affiliated, and trying to compare it against them entirely separated. Which figure would you use?

Mr. Melchior: I would use the year '59 just before the merger took place.

The Court: Of course you couldn't do that.

Mr. Bergson: Nine months of it they were merged.

The Court: Well I am going to receive the exhibit, bearing in mind this affiliation. If these figures would be changed why of course I am going to let you do it. What I am up against is, if I let you show it it seems to me that you destroy the basis of the whole chart. Because then you [fol. 1684] are trying to compare what happened to the integrated companies against what happened to Alcoa is a separate company and Rome as a separate company. Just how to do that, I don't know.

Mr. Melchior: Of course, Your Honor, they have a column for Alcoa and Rome. We have no quarrel with that. But our quarrel is that they distort the percentage of the integrated companies as compared with the non-integrated companies. And we think the year '58 is the unsound year.

Mr. Bergson: Your Honor, if anybody is hurt by this acquisition from the industry standpoint it is those who remain in the industry. And the only way we can properly portray that is to treat those companies as a group. And that is what we have done here. Now I think that this is as fair a chart as we could possibly conceive.

The Court: All right. I will receive it. Overruled.

(Defendant's Exhibit AR-62 for Identification received in evidence.)

# [fol. 1685] By Mr. Bergson

Q. Now, Mr. Day, I invite your attention to Defendant's Exhibit AR-63 for Identification and ask you whether that exhibit was prepared by you or under your supervision or direction?

A. Yes.

Q. Would you please describe that exhibit?

A. This shows the growth in shipments of the non-integrated producers for aluminum insulated covered wire and cable starting with the year 1958, for each year through 1961. Tonnages shown here are the same as those shown in 60, AR-60. The same groupings in columns exist; the total is the total industry; the primary producers is explained in the note; the other producers being the remaining non-integrated companies. The only difference here being that Alcoa and Rome are combined, as in the immediately preceding exhibit.

Q. What what does this chart show in regard to the combined percentage of the market of Alcoa and Rome year by year from 1958, the year immediately prior to the acquisition through December of 1961?

A. In 1958 they had a 16.3 percent participation. In '59 16.6; in 1960 14.8 and 1951 13.0 percent participation.

[fol. 1686] Q. Now what participation do the so-called other producers have from year to year?

A. In 1958 they had 29.8 percent; in 1959 31.9 percent; in 1960 32.7 percent; in 1961 33.5 percent.

Q. Now what does the chart show so far as percentage

of change from 1958 is concerned, so far as the other producers are concerned?

A. It shows that in 1959 they shipped 27.6 percent more than they did in 1958. In 1960 they shipped 37½ percent more than they shipped in 1958. And in 1961 they shipped 51 percent more than they shipped in 1958.

Q. And how about Alcoa-Rome?

A. In 1959 Alcoa-Rome shipped 20.9 percent more than they did in 1958. In 1960 they shipped 13.8 percent more than they shipped in 1958 and in 1961 their shipments amounted to only 6.7 percent more than their 1958 shipments.

Mr. Bergson: I offer Defendant's Exhibit AR-63.

Mr. Melchior: Government objects to this on the same basis that it objected to AR-62.

Mr. Bergson: Your Honor, I would like to add one more comment on this.

[fol. 1687] The Court: Go ahead.

Mr. Bergson: The government has contended all through this case that the remaining independents have difficulty in surviving.

The Court: Yes.

Mr. Bergson: This chart and the other prior chart are for the purpose of showing how—I can't think of the right word.

The Court: You wouldn't say "ridiculous"!

Mr. Bergson: I would but I won't. I want to say how flimsy or how much without foundation that contention is.

The Court: I understand perfectly.

Mr. Melchior: May I make a comment here, Your Honor? The Court: Yes.

Mr. Melchior: Our purpose in pointing out this distinction throughout this case between the integrateds and non-integrateds is because of the express Congressional intent that small business be continued as an important part of our economy. And we are attempting to show that, that the [fol. 1688] competitive action to the non-integraters not only by Alcoa but the other integrated companies, the continued competitive existence has become more and more difficult and in time there may be no more.

The Court: Aren't they getting more of the market?

Mr. Melchior: We don't think so, Your Honor. No sir. We don't think so.

Mr. Bergson: Do you question the accuracy of these

figures?

Mr. Melchior: We question the conclusions that are drawn from these, because we don't feel the proper years are taken.

The Court: I am not talking about the proper year. I say more of the market.

Mr. Melchior: We don't think so. The statistics show that.

The Court: All right, I guess we won't finish this anyway. Recess until tomorrow morning ten o'clock.

Mr. Bergson. Did you admit this?

The Court: Yes. I will receive it.

(Defendant's Exhibit AR-63 for Indentification received into evidence.)

(Whereupon a recess was taken to February 22, 1962 at ten o'clock a.m.)

[fols. 1689-1690] [Title omitted]

# Transcript of hearing-February 22, 1962

[fol. 1691] The Court: All right, gentlemen, you may

proceed.

Mr. Bergson: Your Honor, we would like this morning to pursue the policy we did yesterday, to interrupt Mr. Day's testimony and put on a few utility witnesses again.

The Court: All right.

Mr. Adler: Mr. Hopkinson.

JOHN HOPKINSON, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

### Direct examination.

# By Mr. Adler:

Q. Would you state your name and position, please?

- A. My name is John Hopkinson. I am the purchasing agent of the Hartford Electric Light Company of Hartford, Connecticut.
  - Q. How long have you held that position?
  - A. Since 1958.
- Q. In your position do you have responsibility for the purchase of wire and cable products?
  - A. Yes, I do.
- Q. How long have you been engaged in purchasing wire and cable products for public utilities?

[fol. 1692] A. Since 1947.

- Q. During the period since 1947 have you been active in organizations or associations of public utility buyers or purchasing agents?
- A. Yes. I am a member of the Public Utility Buyers Group of the National Association of Purchasing Agents. I am also a member of the Edison Electric Institute, Purchasing and Stores Committee. I am also a member of

several local purchasing associations in Connecticut. They are not confined directly to utility purchasing.

Q. Could you give us some information regarding the Hartford Electric Light Company, its revenues and area it

serves; number of customers?

A. Yes. Our company serves a group of towns and communities in Connecticut, I think there is a total of 37. Our gross revenues last year approximated sixty million dollars. We have some 3400 miles of distribution line and I believe 219 miles of high voltage transmission line.

Q. Approximately what do your annual purchases of wire and cable amount to?

A. It varies from year to year, depending on the construction program. But that variance is roughly between [fol. 1693] five hundred and six hundred thousand dollars a year.

Q. I refer you to the board there labeled "Alcoa-Rome Overlap Products," a photostatic copy of which has been introduced in evidence as Defendants' Exhibit AR-20, and ask whether you purchased any of the products shown there?

A. Yes, we do.

Q. Could you describe which ones?

A. Well, we purchase the ACSR, which is the top exhibit, for transmission and sub transmission line purposes. We purchase the second item, the all aluminum conductor for distribution purposes, and we purchase the last item, the bottom one, for service drop, service from the pole to the house.

Q. Approximately what portion of your six hundred thousand dollars wire and cable expenditures would be represented by these products?

A. I would say approximately half.

Q. Now, referring to the period prior to April, 1959, when Alcoa acquired Rome Cable, who were your main suppliers of the products that you refer to on that board?

A. Starting at the top with the ACSR, we purchased [fol. 1694] from Alcoa, Kaiser, Anaconda and General Cable. The all aluminum conductor we purchased from those same four companies that I mentioned, and in addition purchased from the Rome Cable Corporation.

The triplex, we have customarily had four suppliers, which is Rome, Anaconda, General Cable, and Kaiser.

Q. Now, referring to the bare products, the ACSR and all aluminum cable, were there other companies in addition to the ones you named who solicited your business but from whom you did not—but who were not your suppliers?

A. Yes. We are solicited by Reynolds, Aluminum Company, and Southern Electric, which is Olin Industries, I

believe.

Q. And with respect to the triplex or multiplex cable, are there other companies?

A. Yes, there is, in addition to Olin and Reynolds we are solicited by the General Electric Compan, or their wire and cable division.

Q. Now, referring still to the period for the acquisition of Rome by Alcoa, how did you make your purchases of

those products?

- A. Most of our purchases were made on the basis of [fol. 1695] sending orders at book prices to the companies that I have mentioned. Occasionally when we were aware of what we term a soft market, we would send out competitive bids to those same four and buy from the one who rendered the lowest price.
- Q. Was it your experience during the period when Rome was a separate supplier that Rome would be a company to initiate a price reduction in that kind of a market situation?
  - A. That has never been my experience.
- Q. Now, turning to the period since the acquisition, has there been any change in your method of purchasing?
  - A. No, there has not.
- Q. And referring to the multiplex cable product there, do you have the same number of suppliers, the same suppliers as you did before?

A. Yes.

Q. And now with respect to the bare products, I believe you enumerated five suppliers of those products: Alcoa, Kaiser, Anaconda, General Cable and Rome before the acquisition, what is the situation today?

A. We no longer send our orders for the all aluminum

conductor to Rome, but send them to Alcoa.

[fol. 1696] Q. So that today you have four instead of five suppliers?

A. That's right.

Q. Have you considered adding another supplier so that you would have five now, as you had before?

A. No, I have not. We feel that four gives us an ample

number.

Q. If you wanted to add a fifth, could you do so?

A. Very easily.

Q. What are your reasons and what have been your reasons for limiting your supplier group to a relatively small

number of suppliers?

A. Well, it is my feeling that we are not a tremendously large company, and we are much better off to be an important customer to a fewer number of suppliers than to spread our business over the entire industry where we would not be so important to all of them. We frequently call on any one of these four for engineering services, for emergency shipments, and we feel free to do so because of the fact that we are of monetary importance to them.

[fol. 1697] Q. Is the ability to get emergency shipments

an important matter for a public utility?

A. Very definitely. There have been times during my experience as a buyer of such cable that we have had our suppliers work overtime, work nights, make special truck shipments to us in times when we have had flood conditions or ice storms or something of that sort.

. Qo Is it your feeling that if you were spread too thin you might not be able to get the suppliers to cooperate in this

manner! .

A. That's right. We get complete cooperation from our suppliers now.

Q. Do you feel that your approach to the matter of wire

and cable buying is unusual for public utilities?

- A. No, I believe it is almost identical with the other utilities that are in the New England area. Those are the ones I am most familiar with.
- Q. Do you have any reason to think that Alcoa by virtue of its acquisition of Rome has put itself in a stronger position to participate in your wire and cable business?

A. I do not believe that to be true.

[fol. 1698] Q. In your opinion as a purchaser of wire and

cable products, including the overlap products referred to there on the product board, has Alcoa's acquisition had any adverse effect on you?

A. No, it has not.

Mr. Adler: No further questions.

The Court: Cross-examine.

Cross-examination.

# By Mr. Wertheimer:

Q. Mr. Hopkinson, on direct examination you stated that your company limits itself to a relatively small number of suppliers for a number of reasons, could you go through

those again?

A. Certainly. The four suppliers that I have mentioned, and one of the reasons I mentioned was the fact that we could call on them, and have done so, for engineering services in planning our transmission lines. I did not mention, but there is an additional one. All four of these companies maintain either factory or local stocks within Connecticut of wire and conductor for our specific purposes. In other words, they almost act as a storeroom for us.

[fol. 1699] Q. Now, you used Rome Cable for your AAC and triplex prior to its acquisition.

A. Yes.

Q. Did Rome satisfy your requirements for engineering service, stockpiling and convenient location and the rest?

A. Yes.

Q. Was it a helpful company in terms of engineering help?

A. Yes, they were very helpful, although the bulk of the time we called for engineering services it was usually to the Alcoa group or to General Cable. This service was offered by Rome. I would say most of the time when we wished to take advantage of it we would turn to Alcoa or General Cable.

[fol. 1700] Q. Do you know whether some other companies who do not bid on your requirements offer the same services?

A Yes. Yes, they do.

- Q. You also mentioned emergency shipments as one of the reasons why you like to limit your business?
  - A. Yes.
  - Q. Is this because of any shortage in the industry?
  - A. No, no.
  - Q. Just because you need stores to keep your lines?
- A. Based primarily on the proximity of the plants that furnished our product.
- Q. Now, what rank would your utility company be among the nation's utilities, in size?
  - A. I do not know.

Mr. Wertheimer: That is all.

Mr. Adler: No redirect.

(Witness excused.)

Mr. Latimer: Mr. Blank.

[fol. 1701] JOHN L. BLANK, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

### By Mr. Latimer:

Q. Mr. Blank, would you state your full name and position, please?

A. John L. Blank; Manager of the Purchasing and Stores, Central Illinois Public Service Company, Springfield.

The Court: What is the name of that company?

The Witness: Central Illinois Public Service Company.

The Court: All right. Keep your voice up.

- Q. Does your position encompass responsibility for purchasing wire and cable products?
  - A, It does.
  - Q. And how long have you held your present position? A. Since October, 1959.

Q. And prior to that what was your position with the company?

A. I was known as general storekeeper.

Q. Pardon!

[fol. 1702] A. General storekeeper of the company.

Q. How long had you been general storekeeper?

A. Since 1946.

Q. During the time that you were general storekeeper, were you generally familiar with the purchasing of wire and cable products?

A. I was familiar to the extent that we received the

products ordered by the purchasing department.

Q. And you were generally familiar with your suppliers, who your suppliers were?

A. Yes.

Q. Would you describe generally the area which-your company services, and the size and number of customers?

A. We are located mostly in the lower half of the state and in 61 counties, and we publicly serve 700,000 area population, and we have 239,000 customers in our service area.

Q. Yes. Approximately what were your operating reve-

nues last year?

A. Approximately sixty-six million.

Q. Mr. Blank, do you purchase overhead products for use in your customers' system?

A. I do.

Q. What products do you purchase for transmission and [fol. 1703] distribution, transmission and primary distribution?

A. We purchase items ACSR, bare aluminum and all aluminum for transmission, and we use the smaller sizes of ACSR for both transmission and distribution in addition to copper.

Q. What items do you purchase for secondary distribu-

tion?

A. It is mostly copper.

Q. Mostly copper. And would that be on new construction as well as replacement?

A. At present it is.

Q. Approximately how many pounds a year of copper for secondary distribution do you purchase, would you say?

A. It would be at least a hundred thousand.

Q. Have you given consideration to using another product in your secondary distribution?

A. Yes, we are considering the item of triplex:

Q. Triplex !

A. For distribution.

Q. But at the present time you are continuing to purchase copper?

A. Copper.

[fol. 1704] Q. What product do you purchase for service drop?

A. We use triplex for all our service drops now.

Q. Turning to the triplex, at the time you became responsible for the purchasing of wire and cable, who were your suppliers of triplex?

A. Kaiser and Alcoa and Anaconda, principally.

Q. To your knowledge were the three you mentioned also your suppliers in 1958?

A. Very nearly so.

Q. They were your main suppliers?

A. They were the main ones.

- Q. In 1958 do you know if you purchased any triplex from Rome?
- A. I believe that we did purchase a small quantity from them.
- Q. Now, in the period we are talking about, in 1959, when you became responsible for the purchases of triplex, on what basis did you buy triplex?

A. Usually on a firm price basis.

The Court: On a what?

(The Court Reporter repeated the answer as above recorded.)

The Witness: Firm price basis.

Q. Did the major portion of that business go to the three [fol. 1705] companies that you mentioned?

A. Yes, it did.

Q. Now, did there come a time when the situation changed somewhat in the manner in which you purchased triplex?

A. Yes. There was a time when we got a price increase and a minimum quantity delivery arrangement that wasn't

satisfactory to us, so we sent out for bids and changed our practice on buying,

Q. Who did the price increase come from at that time!

A. The price increase came first from Kaiser.

Q. Now, when was this, precisely, when the price increase, when there was this price increase?

A. Fall of 1960, as I recall it.

Q: Fall of 1960. And then you said that Kaiser increased the price?

A. They were the first to announce their increase.

Q. And also an increase in their minimum quantity requirements?

A. That's right.

Q. And what did the two other regular suppliers do?

A. They followed up with the same price increase, identically.

Q. And what was your reaction to this price increase and [fol. 1706] the increase in the minimum quantity requirements!

A. The important thing to us was the quantity requirements, which was too large for us to use in an operation of our size. So we asked for bids on it, thinking the price would be the same, but the quantity would be different.

Q. Who did you send these bids to?

A. In addition to the three I named we sent them to Central Cable and Nehring.

Q. Now, what was the result of this submission of bids?

A. Well, we got a considerably lower price, under the price increase, and deliveries in quantities that we could use.

Q. And who gave you that?

A. Both Central Cable and Nehring, both did, but the three large companies, the price remained the same.

Q. Did you continue to solicit bids from the same five companies after this?

A. Yes, we did.

Q. I forgot to ask, did you place an order with Nehring and Central when they came in with the lower price?

A. Yes, we did.

Q. As you continued to solicit bids from the same five, [fol. 1707] what was the result?

A. Well, for quite some time the two small companies'

bid was the lowest, then the larger companies began to drop. Anuconda came down first, then Alcoa and finally Kaiser:

Q. Now, at the time you sent out bids in the fall of 1960 on triplex, were there other companies that you could have asked to big and whom you didn't choose to do so?

A. Oh, yes, there were several companies we could deal

with.

Q. Could you name some of those?

A. Well, General Cable and Southwire and Olin, and there are others, Reynolds.

Q. And would these all have been acceptable suppliers of triplex?

A. I am sure they would be acceptable.

Q. Mr. Blank, can you state why you didn't choose to accept bids from all these companies and just limited it to a few?

A. Well, principally, we are a small company, and we would like to remain an important buyer to a few companies, a significant buyer, so that they would appreciate our business enough to stock material and take care of our [fol. 1708] needs in emergency, because we are a service company.

Q. Why is it important to a utility company like yourself to be assured of prompt service and delivery at the

time of the emergency?

A. We do have emergencies, but service is our whole business, and it is necessary for us to give that service. We have hospitals and a lot of other businesses that depend on us—elevators and buildings—and we must maintain that service.

Q. Now, Mr. Blank, turning to the transmission and distribution products which you purchase, when you became responsible for the purchase of those products, who were your suppliers?

A. Essentially the same ones we named before.

Q. That would be Kaiser, Alcoa and Anaconda?

A. That's right.

Q. To your knowledge were they also your main suppliers in 1958?

A. Practically the same.

Q. How did you purchase those products? On what basis did you purchase those products?

A. Mostly on a firm price basis.

Q. Do you ever send out bids on these products at times? [fol. 1709] A. Yes.

Q. Who would you send them to?

A. We would send them—at the present time to Alcoa, Kaiser, Anaconda and probably Central Cable and Nehring.

Q. Now, were there others who you don't choose to deal with but who would be acceptable suppliers of these products?

A. If we chose to, there would be several others accept-

ablė.

Q. Would they be the same ones you mentioned before in connection with triplex?

A. The same.

Q. Now, Mr. Blank, is the fact that Alcoa, since its acquisition of Rome Cable is now in a position to offer a broader line of wire and cable products, has this helped them at all in selling the overhead products to your Company!

A. It hasn't made any significant difference to us.

Q. In your opinion, Mr. Blank, has the merger had any adverse effect on you and your company as a purchaser of wire and cable products?

A. None at all that I can see.

Mr. Latimer: Thank you.

[fol. 1710] The Court: Cross-examine.

Mr. Mahaffie: No cross-examination.

Bruce S. Corby, called as a witness in behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

# By Mr. Adler:

Q. Would you state your full name and position, please?
A. Bruce S. Corby. I am purchasing agent for the Central Hudson Gas & Electric Corporation, headquarters located in Poughkeepsie, New York.

Q. How long have you been in that position?

A. A little over two years, since October of 1959.

Q. And what was your prior position?

A. Assistant purchasing agent.

Q. For the same company!

A. For the same company.

Q. In your present job are you responsible for the purghase of wire and cable products?

A. I am, yes.

Q. In your previous position as an assistant purchasing [fol. 1711] agent, were you familiar with the policies followed by your company?

A. Yes, I was.

Q. What area is served by the Central Hudson Company?

A. We cover the mid-Hudson Valley, from north of Peekskill to south of Hudson on the east side of the river, and from the same position to just south of Albany on the west side of the river, an area of about 2500 square miles, about 380 or 390 population, and 135,000 electric meter customers.

Q. What are your approximate annual revenues?

A. Can I refer to my sheet?

Q. Yes..

A. Electric, about 30,000,000.

Q. That is the electric?

A. We are an electric and gas company and I am just referring to the electric end of it here.

Q. What would the gas be?

A: Almost seven million in addition.

Q. What are your approximate annual expenditures for

wire and cable products?

A: The average annual for material and supplies, which I am excluding any large construction jobs, would run approximately \$200,000 a year.

[fol. 1712] Q. What would the large construction jobs

entail?

A. For instance, if we were to add 17 miles of transmission line, we would consider that a special job.

Q. And what product would that-

A. (Interrupting) That would be transmission cable.

Q. ACSR!

A. Yes.

Q. In what sizes?

A. Well-

Q. For that type of job?

A. It would depend on what the engineering specs called for on the job, what we were connecting, what load we were carrying.

Q. The type of job you are excluding from the two

hundred thousand is one that doesn't happen-

A. (Interrupting) It is an extraordinary job with us and it would make a large expenditure in one year which would throw the average out, I think.

Q. So that your normal more or less steady wire and cable expenditures would be about two hundred thousand

dollars!

A. Yes. Q. Annually?

A. Yes.

[fol. 1713] Q. I refer you to the product board, there, a photographic copy of which has been put in evidence here as Defendants' Exhibit AR-20, and ask what portion approximately of the \$200,000 would be represented by some or all of those products!

A. I would make an estimate of about 50 per cent, and not too much of that would be the all aluminum. In other words, the ACSR and weatherproor and triplex would be

our main ones,

Q. That would represent, then, roughly, a hundred thousand dollars?

A. Yes, that would be my estimate, it would fall somewhere in there.

Q. Now, referring again to these products, I believe you testified that you purchase ACSR, the covered line wire and triplex; did you purchase those prior to April, 1959?

A. Yes, we did.

Q. And at that time who were your suppliers of those products?

A. Our main suppliers were Rome, Alcoa and Anaconda.

Q. And how was the business placed, how did you purchase those products from the three companies you named? [fol. 1714] A. We purchased basically on a book price, and we tried to balance the business on a dollar volume between the three companies.

Q. Now, since that date, since April, 1959, have you at any time undertaken to modify your method of purchasing those products?

A. Yes, we have.

Q. And would you describe what you have done?

A. Well, starting with the full year of 1961, and our thinking and planning occurred during 1960, in an effort to better take advantage of what we considered a competitive market, we decided to send our requirements for these materials and supplies out to various companies and have them bid, and we would place the business with the lowest bidder.

Q. One company, however, might get one product and

another company might be 'ow bidder on another?

A. Yes. We had a number of items in addition to these three particular ones that I mentioned here, and we would place it item by item with the lowest bidder.

Q. To which manufacturers of these overlap products

were invitations to bid sent?

A. Alcoa, Anaconda, General Cable, Kaiser and Reynolds.

Q. Were there other manufacturers of these products to [fol. 1715] whom you might have sent invitations?

A. There were two others that I can think of offhand who called on us, Olin or Southern Electrical and Essex.

Q. Did they attempt to become one of your bidders, were they interested in that?

A. Yes, they would liked to have become one.

Q. What were your reasons for not giving them an op-

portunity and perhaps others an opportunity?

A. We felt that the security of our source of vendors is a paramount factor with us, we didn't want to spread ourselves so thin that we were a small account with a lot of companies. We would rather be a good account with a few companies.

Q. Is that something of importance for a public utility?

A. In our judgment it is. If the power goes off and the lights go out and there is only one thing to do, and there are no excuses, it is to get the power back on and we have to have companies that we can count on.

Q. In the bidding on these products in 1961, how did Alcoa, Rome, or the Rome Cable Division of Alcoa fare?

A. It just so happens they didn't get any.

Q. Your feeling under your present system of purchas-[fol. 1716] ing, is that you are getting adequate competition among your suppliers?

A. Yes, I would say we were. There is one less competitor, obviously, but the amount of competion has not lessened

that we can see.

Q. Do you feel that from your standpoint as a purchaser of these products the acquisition of Rome by Alcoa has had any adverse effect?

A. No.

Mr. Adler: That's all.

Cross-examination.

# By Mr. Wertheimer:

Q. Mr. Corby, you said your utility is relatively small, would you know where it ranks among United States utilities, what size?

A. I don't remember saying it was a relatively small one, however, I will say it. I have no idea where it ranks.

[fol. 1717] Q: What is your rated peak capacity?

A. Can I check here again?

Q. By all means.

A. I don't have it here. I wouldn't want to take a guess.

Q. Okay. How often do these extraordinary jobs that you

spoke of come up with your system?

- A. Well, it depends on the expansion in the area. In the budget for this year there is none; there was none last year; I believe the year before we had about eleven miles of transmission line that I would consider extraordinary. You see, when you build a large generating plant you have to get the power out of there. One year or one period your expenses go to build the generating plant. Then you have to get the power out and then you will be following that up with transmission lines and then the next year with distribution.
  - Q. There hasn't been too much of it in recent years!
    - A. Not in the last two or three years.
    - Q. You said that at least prior to the acquisition of

Rome, Rome was one of the three companies that supplied [fol. 1718] you with wire and cable products you indicated?

A. That's right.

Q. Why was Rome chosen?

A. One reason was their position geographically as far as we were concerned, the transportation from Rome to our storerooms was not as far as others. One is we felt it was a good company, it was one of those we decided on. They had given us good service and that would be just about it. Their product was a good one.

Q. You picked three companies to supply you. You obviously thought the three you picked were among the best

in the field.

A. Our picking didn't mean that any of the ones we didn't pick wasn't as good as the ones we did pick.

Q. They were at least as good?

A. We would like to think they were as good as any.

Q. What caused you to change your practice of buying, was there any event that caused you to switch your pur-

chasing habits?

A. No singular event. It was two things. One is we wanted to make an attempt to cut down our own inventory [fol. 1719] and at the same time we felt, as I have said, the market had become more competitive and I would say not only in wire and cable, this was in all our material and supply items and we wanted to take advantage of this competitive market, this buyer's market, if you would like to call it that. We felt the best way to do it was to throw our business open to bids where it was at all practical.

Q. You think that by throwing open your business to a large number of companies you get a better price than by limiting yourself to a smaller number of companies?

Mr. Adler: He didn't testify that he had thrown it open to a large number of companies.

Mr. Wertheimer: Certainly larger than he had before.

Mr. Adler: Larger is different than large.

The Court: He increased it by one or two, as I recollect. Go ahead.

# By Mr. Wertheimer:

Q. By adding some companies to your list of suppliers [fol. 1720] you think you increased your chances for get-

ting better prices?

A. Actually the increase was done because these companies had been putting or exerting more pressure to become one of our suppliers, and when we opened our method up to a bidding arrangement, naturally they heard about it and if you deal fairly with the people who are selling products to you, you have to include them or you might just as well tell them not to call on you.

Q. You went them to call on you, don't you?

A. Yes.

Q. Why?

A. The companies we deal with help us to keep abreast of the latest changes in the field in which they cover. In other words, they should be experts or can bring experts down and explain any new products.

Q. So the more people that call on you the more help you

are given?

A. I wouldn't say that. There is a point of no return in this.

Q. I realize that, but you said you wanted these companies to call on you.

[fol. 1721] A. Yes, we considered them good companies.

Q. And the reason you included them, the reason you broadened your list was only because you wanted them to call on you and because they put pressure on you.

The Court: No, he said the reason they changed their manner of buying was to meet a substantially competitive market. What you are doing, counsel, is separating one distinct thing from the other. It wasn't any one thing that caused you to change, as I understand.

The Witness: No, it wasn't.

The Court: It was a combination of circumstances?

The Witness: It was a combination.

The Court: All right.

Mr. Wertheimer: No further questions.

Mr. Adler: No redirect.

[fol. 1722] Mr. Bergson: Mr. Day.

GEORGE DAY, resumed the stand, having been previously sworn, testified further as follows:

# Direct examination. (Continuing)

## By Mr. Bergson:

Q. Mr. Day, when we adjourned yesterday I believe we had just introduced into evidence Defendant's Exhibit AR-63.

The Court: That corresponds with my record.

Q. Now, I would like to invite your attention to Defendant's Exhibit AR-64 and I ask you whether this exhibit was prepared by you or under your direction or supervision.

A. Yes, it was.

- Q. Would you please describe this exhibit?
- A. AR-64 is a chart entitled "Post-acquisition growth of non-integrated producers of aluminum conductor wire and cable for each of the years '58 through '61." The category aluminum conductor wire and cable are essentially the same on the two previous charts or exhibits. And it shows the [fol. 1723] total industry shipments primary producers or affiliates. In another column the non-integrated producers and then the Alcoa-Rome combined shipments for those years.
- Q. Now, looking at the Alcoa-Rome combined shipments, will you state what percentage of the total market Alcoa and Rome enjoyed in each of the years listed on the chart?
- A. In 1958 they had 29.1 percent; 1959, 28.4 percent; 1960, 26.6 percent; 1961, 24.8 percent.
- Q. Now, going to the column entitled "Other producers," would you state what they had?
- A. In 1958 they had 17.1 percent; 1959, 20 percent; 1960, 20.5 percent; 1964, 17.9 percent.
  - Q. Going now to the primary producers or their affiliates.
- A. The same. 1958 they had 82.9 percent; 1959, 80 percent; 1960,  $79\frac{1}{2}$  percent; 1961, 82.1 percent.
- Q. Now, as I gather what you said from 1958 to 1961 the Alcoa-Rome share has decreased.
  - A. Yes.

Q. The other producers share has increased slightly? [fol. 1724] A. Yes.

. Q. And the combined primary producers share has increased more noticeably than the other producers; is that correct?

A. Yes.

Q. Now, first let me ask you whether this indicates to you whether there is competition between Alcoa and the other primary producers?

A. Yes, it certainly does.

Q. And secondly let me ask you what you attribute, to what do you attribute the small increase in percentage of the other producers as against the larger increased percentage of the primary producers.

A. I would believe that basically that is the stronger growth in the insulated portion. You are talking about the

other producers percentage increase?

Q. The reason that the other producers don't show the same rate of increase that the primary producers show.

A. Oh, I think I don't get the question. I am sorry.

Q. Let me see if I can state it again. Is it because of [fol. 1725] the inclusion of ACSR in this chart as well as insulated wire and conductor that the percentage of the primary producers appears to be larger than that of the non-affiliated producers?

A. Oh. Yes.

Q. Now, let's go back to the column entitled "Percentage of change from 1958." What does it show for the percentage of change for Alcoa-Rome?

A. It shows that their combined shipments were 13.9 percent greater than they had in 1958.

Q. And for the other producers?

A. In 1961 the other producers had shipments 39.8 percent greater than in 1958.

Q. And the primary producers?

A. They had 32.6 percent greater than in 1958.

### OFFERS IN EVIDENCE

Mr. Bergson: I offer Defendant's Exhibit AR-64.

Mr. Melchior: Government objects to AR-64 on the same basis as it objected to AR-62, to the effect that Rome's share of shipments is improperly included in the year 1958 as [fol. 1726] an integrated producer.

The Court: Overruled. I will receive it.

(Defendant's Exhibit AR-64 for identification received in evidence.)

# By Mr. Bergson:

Q. Now, Mr. Day, I invite your attention to chart AR-54 for identification.

The Court: 54? Mr. Bergson: 54.

A. All right.

Q. And ask you whether that chart was prepared by you or under your direction and supervision.

A. It was.

Q. Now, will you describe that chart.

A. This chart shows Rome Cable sales of weatherproof for the years 1956 through 1960 in thousands of dollars and shows the division between aluminum and copper for that product.

Q. And it shows that in 1956 how much of the product was in aluminum?

A. 1956, 23.3 percent was aluminum and 76.7 percent in copper.

[fol. 1727] Q. 1957?

- A. 18.4 percent in aluminum; 81.6 percent in copper.
- Q. And in '58?

21.8 percent in aluminum; 78.2 percent in copper.

Q. And that was the last full year prior to the acquisition?

A. Yes.

Q. Now, it shows even smaller percentages of aluminum and copper since the acquisition?

A. That is correct.

Mr. Bergson: I offer Defendant's Exhibit AR-54.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-54 for identification received in evidence.)

# By Mr. Bergson:

Q. Now, Mr. Day, I invite your attention to Defendant's Exhibit AR-55 for identification and ask you whether or not that exhibit was prepared by you or under your direction and supervision.

A. Yes, it was.

[fol. 1728] Mr. Bergson: Now, your Honor, I-excuse me.

Q. Will you please describe the exhibit?

A. This chart shows Rome sales of service drop cable for the years 1956 to 1960, and shows the division between the aluminum product and the copper product. And for each of those years.

Q. Take the year 1956. What percentage was shown in aluminum and copper?

A. 1956 the aluminum percentage was 79.1 and copper was 20.9.

Q. And 1958?

A. 1958, 81.8 percent aluminum; 18.2 percent copper.

Q. And '591 .

A. 80.8 percent aluminum; 19.2 percent copper.

Q. 1960?

A. 83.7 percent in 1960 in aluminum and 16.3 percent in copper.

Mr. Bergson: Your Honor, in offering this exhibit I am not conceding that service drop is a line of commerce, but in view of the government's case I thought we ought to [fol. 1729] have a chart on service drop and I now offer it.

The Court: Mr. Day, this chart is made up of triplex

alone or multiplex?

The Witness: No, the area known as service drop cable.

The Court: That would include so-called line wire?

The Witness: I couldn't answer that.

Mr. Bergson: I am going to clear that up with Mr. Fraser, your Honor.

The Court: All right.

Mr. Bergson: Mr. Day did the statistical work on this.

The Court: All right. Mr. Bergson: I offer it.

Mr. Melchior: You are going to clear it up by subsequent testimony?

Mr. Bergson: I will clear up his Honor's question. I don't believe the purpose for which I offer the chart needs clearing up.

Mr. Melchior: You are not going to clear it up at this

[fol. 1730] time?

Mr. Bergson: No.

Mr. Melchior: No objection. The Court: I will receive it.

(Defendant's Exhibit AR-55 for identification received in evidence.)

## By Mr. Bergson:

Q. Now, Mr. Day, I invite your attention to AR-56 for identification and ask you whether that exhibit was prepared by you or under your direction or supervision?

A. Yes, it was.

Q. And would you please describe the exhibit.

A. This chart is entitled "Rome sales of service drop and weatherproof," and is actually a summation of the two previous charts on the same pattern, for the years 1956 to 1960, showing the division between aluminum and copper.

Q. And for the year 1956 it showed what?

A. It shows aluminum with 44.1 percent and copper 55.9 percent.

Q. And in '581

A. 46.2 percent aluminum; 53,8 percent copper.

[fol. 1731] Q. And in '60?

A. 44:1 percent aluminum; 55.9 percent copper.

Mr. Bergson: I might say, your Honor, when this chart was prepared I didn't know whether it was in anticipation of your Honor's question, but it has a distinct bearing on it.

Loffer Defendant's Exhibit AR-56.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-56 for identification received in evidence.)

By Mr. Bergson:

Q. Now, Mr. Day, I invite your attention to Defendant's Exhibit AR-65 for identification and ask you whether that exhibit was prepared by you or under your direction or supervision.

A. Yes, it was.

Q. Would you please describe that exhibit?

A. This chart is entitled "Copper and aluminum utilization in weatherproof wire," expressed in thousands of dol-[fol. 1732] lars and shows for the years 1958 and '59 that amount of data that we could determine that was available showing particular companies' shipments of these products and the division between aluminum and copper, if that was possible, and relates it to the total industry figure at least for '58 obtained from the Census of Manufacturers.

Q. The total industry figure was obtained from the Census of Manufacturers. Alcoa and Rome's figures I assume was obtained from company records?

A. That is correct.

Q. The figures insofar as they relate to other companies, where were they obtained?

A. They were obtained from, well the note—I can't find it here—note No. 4 shows that they were obtained from documents supplied by the Department of Justice.

Mr. Bergson: Now, your Honor, we are offering Defendant's exhibit, this exhibit solely for the purpose of showing that in those two years to the extent that we had information available, that there was copper weather-[fol. 1733] proof wire being sold as well as aluminum weatherproof wire. We are offering it solely for that purpose, and I now offer it.

Mr. Melchior: No objection:

The Court: Received.

(Defendant's Exhibit 65 for identification received in evidence.)

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## By Mr. Bergson:

Q. I invite your attention now, Mr. Day, to Defendant's Exhibit AR-66 for identification and I ask you whether that exhibit was prepared by you or under your direction and supervision?

A. Yes, it was.

Q. Would you please describe that exhibit?

A. This is entitled "Copper and aluminum utilization in service drop cable," expressed in thousands of dollars, and with the previous chart shows for the years 1958 and '59 all the available data we could obtain, shipments of individual companies, total industry figure and the division between aluminum and copper.

Mr. Bergson: Now, your Honor, we are offering this exhibit again solely for the purpose of showing aluminum [fol. 1734] and copper utilization in service drop cable. We again are not conceding the existence of a service drop line of commerce, but to the extent that it might be helpful to the Court we offer it.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-66 for identification received in evidence.)

#### By Mr. Bergson:

Q. I now invite your attention to Defendant's Exhibit AR-67 for identification and ask you whether you prepared that exhibit or whether it was prepared under your direction or supervision.

A. It was.

Q. Would you please describe that exhibit?

A. It is entitled "Copper and aluminum utilization in weatherproof and service drop cable" in thousands of dollars for the years 1958 and '59, and it is actually a summation of the two previous exhibits.

Mr. Bergson: Defendant offers AR-67 with the same reasons that it offered 65 and 66.

[fol. 1735] Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-67 for identification received in evidence.)

Mr. Bergson: I now would like to offer Defendant's Exhibit AR-68 for identification, which is a letter dated November 20, 1961, from Maxwell R. Conklin, chief of the industry division, Bureau of the Census, United States Department of Commerce to Mr. Lee Loevinger, Assistant Attorney General, anti-trust division, United States Department of Justice, Washington, D.C.

Mr. Melchior: What is the letter? We are not familiar

with the letter.

Mr. Bergson: Well, I am surprised that you are not, because we got you to furnish it.

Mr. Melchior: We don't know what the number is. The

number doesn't mean anything to us.

Mr. Bergson: You were given the numbers. (Hands document to counsel)

[fol. 1736] Mr. Melchior: No objection.

The Court: I will receive it.

(Letter dated November 20, 1961, described above marked as Defendant's Exhibit AR-68 in evidence.)

#### By Mr. Bergson:

Q. Mr. Day, I show you Defendant's Exhibit AR-68 and ask you to read that letter to the Court.

Mr. Bergson: Would you like a copy of it, your Honor, to follow it?

The Court: Yes, I would be glad to follow it.

A. (Reading) "Dear Mr. Loevinger: This is in further reference to your request for a special tabulation for 1958 on percentages of shipments of other insulated wire and cable' product class 36312, as defined in the 1954 Census of Manufactures, accounted for by the four, eight and twenty largest companies.

"The results of this special tabulation, the cost of which was defrayed by your department, are as follows: Number of companies 1958, 133; in 1954 140; total value of ship-

ments \$821,452,000 in 1958; \$778,322,000 in 1954.

[fol. 1737] "Four largest companies in 1958, 31 percent; in 1954, 37 percent.

"Eight largest companies in 1958, 50 percent; in 1954, 55

percent.

"Twenty largest companies in 1958, 76 percent; and in

1954, 80 percent."

There is an asterisk by that 80 percent figure which in the footnote says "This figure was previously published in

error as 60 percent."

"Please note that former product class code 36312 is comprised of three product classes in 1958 as follows: 33577, 'magnet wire'; 33578, 'Power Wire and Cable'; and 33579, 'other insulated wire and cable, n.e.c."

Q. Do you know what n.e.c. means?

A. That usually stands for "not elsewhere classified."

(Reading) "If we may be of further service to you, please let us know."

Q. Now, Mr. Day, as an expert market analyst would you say that the figures contained in Defendant's Exhibit AR-68 show an increase in concentration or a decrease in concentration between 1954 and 1958?

[fol. 1738] A. I would say a decrease in concentration.

Mr. Bergson: Your witness, Mr. Melchior,

Cross-examination.

# By Mr. Melchior:

Q. Mr. Day, I direct your attention to AR-59, which relates to shipments of ACSR and aluminum cable bare by primary producers or affiliates and other producers for the years 1954 to 1961. Now, I note in the third column from the left entitled "Primary producers or affiliates" they have a series of percentages running from the year 1954 to the year 1961. And I believe on direct examination you were asked by counsel why you prepared this chart and I believe one of the things you said was to show a trend on the part of shipments by primary producers and other affiliates; is that correct?

A. If you say so.

Q: Well, that is what my notes indicate and I believe that is true. Now, if that is the case would you tell me what sort of a trend there is in that column?

[fol. 1739] A. Well, I think we used the word yesterday "undulations." Variations have occurred over this long space. The trend, if there is one, well, let's put it another way, the trend starts somewhere and stops somewhere, and if you want also the period '54 to '61 it would show at that time a slightly lower participation than in 1954.

Q. Is this really a trend or is this just comparing '54

to '61?

A. I believe the latter would be the more correct statement.

Q. It is little of a trend. There are so many undulations

in here that you can't see the trend.

A. I believe statistically if you want to develop a trend you can do it, arithmetically, and you can determine a trend line on a graph which may show it more accurately.

Q. Could you develop the trend with these figures over

this period of time?

A. You say could I?

Q. Yes, could you?

A. Not here.

Q. Well then, how about from the year 1956 to 1961, [fol. 1740] could you develop a trend in those years?

A. Yes, I believe it could be.

Q. What would the trend be there!

A. From 1956 to '61 there does seem to be, the figures

indicate that the trend is upward.

Q. Now, I direct your attention to the fourth column entitled "Other producers" and I ask you if you see a trend from 1954 to 1961 in that column?

A. Again variations occurring over the spread. There seems to be for the greater part of it a trend upwards for them. In other words, I think you would agree if we stopped at the year 1960, as I explained before, trends go from one spot to another, the trend would certainly seem to be upward. The mere fact of one year, '61, adding on a more percentage could be described as one of those types or undulations.

Q. If we started with the year '56 and worked the trend from '56 to '61, what would the general trend from there be?

A. You would say that it could be down.

Q. You could come up with a number of different conclusions on these two columns, couldn't you?...

[fol. 1741] A. One could.

Q. One could. Now let me ask you this, Mr. Day, and I am talking particularly about these same two columns, primary producers or affiliates on the one hand and other producers on the other. Now, do you know whether Anaconda was a primary producer of aluminum in the year 1954?

A. No, it was not. I believe they started in late '55.

Q. Do you know whether or not Rome had been acquired by Alcoa in the year 1954?

A. It was not.

Q. And do you know whether Olin-Mathison had acquired Southern Electrical in 1954?

A. No, it had not.

Q. It had not. Do you know whether Kaiser Aluminum had acquired the United States Rubber facilities in 1954?

A. I do not believe they had.

Q. Did you as a matter of fact include all of those facilities in the year 1954 in making this tabulation?

A. Yes. The note 1 states that.

Q. Yes. If we took those four entities out of the year [fol. 1742] 1954, the four I have just mentioned from the three merger situations and the fact that Anaconda was not an integrated producer in the year 1954, what effect would that have on the percentage figures in these two columns?

A. Well, it would naturally change them.

- Q. Can you tell me what the change would be in the year 1954?
- A. Well, naturally if you take out the companies which we have put in that year, the figure would naturally be lower.
  - Q. Could you tell me how much lower it would be?

A. I don't have the individual pieces.

Q. You don't. What was the raw material you used in preparing these figures?

A. As the notes state, the documents and answers are supplied by the plaintiff in interrogatories and the other documents.

Q. Do you have the raw material here in the courtroom?

A. I believe it can be obtained.

Q. Could you work that out if I asked you to?

A. Certainly.

[fol. 1743] Q. How long would it take?

A. Well, actually I think there is an easier way for us, to take the government reports themselves which indicate the integrated producers figures for that year, because this figure is merely adding on the separate pieces to that particular BDSA figure.

Q. And what figure would that be?

Mr. Bergson: If you want to start with 55 he can use your charts.

Mr. Melchior: Fine. I am glad to have him use our

charts.

Mr. Bergson: That will save time.

By Mr. Melchior:

Q. Mr. Day, are you familiar with the government exhibits?

A. Yes.

Q. Can you find them in there without assistance from counsel?

The Court: If counsel can assist him let him assist him.

Mr. Bergson: I beg your pardon?

The Court: If counsel can assist the witness, let him assist the witness. This is not murder first.

[fol. 1744] Q. What government exhibit are you going to use, Mr. Day?

The Court: They are just coming to it.

A. We are talking about ACSR and aluminum cable bare?

Q. That's right.

A. That would be your GX-439, would it not?

Q. Now, if you would use government's exhibit, what would the percentage be in the year 1955 for—

The Court: Which percentage?

Q. Looking to the year 1955 on AR-59 and looking at the column entitled "Primary producers or affiliates" which on AR-59 is now indicated as 88.5 percent, what change would

1

you make in that figure after reviewing government exhibit 439?

Mr. Bergson: Counsel, do you mind if I look over the witness' shoulder?

The Court: Go ahead, whether he does or not.

A. Well, the 88.5 percent we show on the AR-59 relates to that tonnage of 139 million. If you take the tonnage of 116 [fol. 1744a] million roughly, as shown on the GX-439, since the total figure is the same for industry, that comes out at 73.7 percent.

[fol. 1745] Q. So you would change that number to 73.7 per cent. Now, comparing the 73.7 per cent with the figure you have in 1961 in that same column on AR-59, and without going through each of the intervening years, could you draw a conclusion as to a trend now that would be any different from your conclusion you made earlier, basing your statement entirely on AR-59?

A. If we chose for the year 1955 a 73.7 per cent participation, as you say, and you show in 1961 an 86.7 per cent, providing you had the same companies involved, I would say you could show that those companies increased their share. But in fact there is a different make-up each year of this primary producer affiliate group.

Q. There are still the same companies involved regardless of whether you use either chart, except that in some cases we have considered the merger as taking place before the year it actually took place, isn't that it?

A. We are talking about today, that is, 1961, of a number of companies. If you take the 73.7 per cent, you are only talking about three companies then.

Q. How many were there? [fol. 1746] A. In what year?

Q. The year you are talking about, how many primary producers were there in the year 1955?

A. In practical effect, three.

Q. Three. Who were they?

A. Aluminum Company of America, Kaiser Aluminum, Reynolds Metals Company.

Q. In 1955; how many were there in 1956?

A. I said in practical fact-

Q. (Interrupting) I don't know what you mean by that.

A. Anaconda started late in 1955, and for all practical purposes if you were taking a full year's production that would not be included.

Q. How many primary producers as a matter of fact were

there in the year 1954?

A. There were three to my knowledge.

Q. Three!

A. We are talking in ACSR.

Q. There were how many in 1954?

A. Three.

Q. And how many in 1955?

A. Three, plus.

Q. Three plus Anaconda?

A. Right.

[fol. 1747] Q. Which came in at the end of the year?

A. Right.

Q. How many in 1956?

A. There were four.

Q. And how many in 1961?

A. There would be five.

Q. Five primary producers-

Mr. Bergson: Wait a minute. Five primary producers producing wire and cable.

The Witness: Yes, we are talking about ACSR and cable.

Mr. Melchior: Your answers have that qualification in it.

The Witness: Namely, we are only talking about ACSR and cable by integrated companies, and who those integrated companies were.

#### By Mr. Melchior:

Q. Yes. Now, Mr. Day, directing your attention to the column "Other Producers," on AR-59, what change would you make in the percentage phase of that column for the year 1955, if you applied the same change?

A. 26.3 per cent.

Q. Now, without going through the detail of filling out [fol. 1748] each year between 1955 and 1961, if I would ask you whether you would note any trend between the years 1955 and 1961 in that column, what would your answer be?

A. I would believe obviously, if you started with 26 per

cent and end up with 13 per cent, that there would be indicated a decline.

Q. Would you state what it would be?

A. There would be indicated a decline.

Q. What percentage of decline, as a matter of fact?

A. Well, I don't think you can take the difference in percentage share as the declining percent. You would have to get it on the volume, would you not?

Q. You can't compare 26.3 to 13.3 and give me a ratio?

A. I say, roughly speaking, there is a decline in market participation of the difference, of whatever there would be, roughly 13 per cent.

The Court: Let me ask you, Mr. Day, I am not certain I am following you. If you use a different figure for 1955, which I guess is what you are doing on that other producers column in AR-59, wouldn't you have to use a different figure in 1960 or 1961, I guess it is!

The Witness: This way, your Honor. In 1961 we have [fol. 1749] a make-up here between primary producers or affiliates versus the other producers as it exists today. Counsel was stating if we used the picture as it existed then in 1955, the make-up between integrated and non-integrated, what those percentage numbers show, and I was merely answering his question.

The Court: I guess I missed it. Say that last over again, if you can.

The Witness: The point is that the 1961 figures, we agree this is a picture of what it is today, exists today, the make-up of the industry, integrated versus non-integrated. Counsel was asking us to show what the share would be of the non-integrated as the industry was actually made up in 1955, and then asks what would be the change in the percentage share for non-integrateds in 1955 as they existed in 1955 and non-integrated in 1961 as they existed in 1961.

Mr. Bergson: Your Honor, maybe I can clear this up a little bit if I may be permitted.

The Court: All right. Make your statement.

[fol. 1750] Mr. Bergson: You will recall that we said when we prepared the charts that we tried to reconstruct the industry so that we could show what happened to those independents who remained in the industry as independents, and

we put into the primary producers column those former independents which became affiliated with primary producers. This accounts for the difference between the two charts.

Frank, your Honor, we think this business of making a distinction between primary producer and non-integrated producer is an artificial distinction, and it is a distinction that we feel that we have to meet in this case because the Government has made it.

The insinuation of the Government chart is that the primary producers don't compete with the non-integrated producers. But as the evidence has shown, there is complete competition between all of these producers.

The Court: Yes.

Mr. Bergson: And our charts were made up in order to try to get this, what I would call straw man that the Gov-[fole 1751] ernment has injected into this case, to meet that.

The Court: I am just trying to understand this table and trying to understand what counsel is driving at. I think I have got it as good as I probably ever will have it.

Mr. Melchior: I will ask several questions and maybe we can clarify it. I will ask these questions of the witness.

### By Mr. Melchior:

Q. In the year 1961, Mr. Day, by reference to primary producers of affiliates column, what share of the ACSR and cable, bare, market, according to these figures was held by primary producers of aluminum who produced these products?

A. That would be 86.7 per cent as shown here.

Q. Yes, and what share of the market was held by other producers who would be the non-integrated producers?

A. 13.3 per cent, it shows.

Q. In other words, as of 1961, the integrateds have 86 per cent and the non-integrated have 13 per cent. Now, to go back to the year 1955, what were the percentages, what was the percentage held by the primary producers in [fol. 1752] those years, in that year, and I am asking you to tell me the figure that denotes only those primary producers who at that time were actually producing ACSR?

A. That was the figure we mentioned before.

Q. That is the one you worked out, yes, what percentage was that?

A. 73.7 per cent.

Q. And what was the share of the market held by the non-integrated producers in 1955?

A. The balance, 26.3 per cent.

Q. 26.3 per cent.

Mr. Melchior: So, your Honor, the Government is not insinuating there is no competition between the two. The government recognizes there is intense competition as was demonstrated, but the purpose of the tabulation that the Government presented, GX-349, is to show the rapidly declining nature of the market held by the non-integrated as compared to the integrated. It is that simple, and we think that Defendants' chart which artificially creates these mergers several years before they transpired destroys that quite obvious trend.

[fol. 1753] The Court: What good is your chart when you tell me that you admit that the competition between the integrated companies is active, vigorous and continuing, because, after all, isn't my job to determine the question of the substantial lessening of competition in the whole mar-

ket rather than taking a segment thereof?

Mr. Melchior: No, I think by testimony in this case on the part of non-integrated producers and by documents which are now in evidence, we are showing that this competition between the two is resulting in a losing battle on the part of the non-integrated, that business is going to the integrateds by virtue of the advantages enjoyed by the integrateds.

The Court: A battle is won and lost in competition every day.

Mr. Bergson: May I be heard a little bit?

The Court: Just one minute. I don't quite follow you, because, of course, when one man gets a contract, why, I suppose it is a percentage change, whether it is an inte[fol. 1754] grated company or not an integrated company, so I don't quite follow your conclusion.

Mr. Melchior: All right, let me say one more thing.

The Court: Wait a minute, just hold it. You are going

to have all the time in the world. I don't quite follow the proposition that because some particular company is declining in its business of making cable or selling groceries, that that constitutes an anti-trust violation. I have got the idea, I may be wrong, that the ultimate purpose of the statute is to obtain a vigorous, active competition, and so long as that active, vigorous competition exists I don't understand it constitutes a violation.

Mr. Melchior: Well, the Congress, as your Honor-

The Court: Don't tell me about Congress. I have read so much about it. I watched both you people, you cite one thing out of what some senator said, somebody else cites something else. I don't know. I have my conclusion on that, [fol. 1755] so don't waste any time on it.

Mr. Melchior: I am not going into the legislative history, your Honor, but I think the Congress by the antitrust laws has tried to protect and insure the existence of competition.

The Court: That's right.

Mr. Melchior: And the most recent enunciation they have made is in the field of mergers, and they want to insure that through mergers those who are advantaged by other ways are not permitted to get an additional advantage through the merger process, and we can demonstrate and we have demonstrated that there have been three very significant mergers or acquisitions of non-integrated companies by the integrated companies.

The Court: Sure. I know all about that. I know I am getting back to, back to your fundamental proposition, that as long as we have an active, vigorous competition and that the merger does not reduce that activity or vigor, it [fol. 1756] is not my understanding that it violates the anti-trust laws. So that in watching your case going in, I thought—I may be wrong about it, I have changed my mind many times—that you minimized, overlooked and practically discarded the active, vigorous competition between these integrated companies in referring to competition as a whole.

Mr. Melchior: No, I think we have shown by the testimony of the non-integrated companies, who have testified on this stand, that they are have extreme difficulty in competing with the integrateds. They pointed out not only are

the integrated companies-

The Court: No use of arguing the evidence. It isn't quite that way as I listen to the evidence. Even the price cuts come from some of these non-integrated companies.

Mr. Melchior: That is true, price cuts come from both di-

rections.

The Court: Those are questions of fact. No use arguing those. I will let you say something, Mr. Bergson, but keep it brief.

Mr. Bergson: I think you said it for me, your Honor. [fol. 1757] The Court: All right. We will take a short recess. (Recess was taken after which the trial was resumed.)

The Court: All right, Mr. Melchior.

Mr. Melchior: Thank you, sir.

# Cross-examination (Continued)

## By Mr. Melchior:

Q. Mr. Day, directing your attention to AR-59 again, and the most-right-hand column on that page, up to the year of the merger, which was 1959, could you note any trend in Rome's shipments of ACSR and aluminum cable, bare?

A. Why, I would say the tonnage shipments from 1958, say, were greater than they were in 1954, and there seems to be an increase.

Q. Yes. Then in the year 1960, the first full year subsequent to the merger, it dropped down substantially, and then in the year 1961 you didn't take the trouble to compute a percentage, is that it?

A. I did compute it but we were going on one decimal

point.

Q. All right. Now, directing your attention to AR-60, is [fol. 1758] there any real trend shown in the third column which is entitled "Primary producers or affiliates", would you say?

A. In the year 1954—from the year 1954 to 1961?

Q. From the year 1954 to 1961 is there really a trend there?

A. Generally it is up and down, but I would say that you couldn't distinguish too clear a trend there.

Q. It is more of these undulations?

A. Yes.

Q. And how about for the column, entitled "Other Producers"!

A. I would say it also is—it would have to be because it is the balance of the figure. It would be the same picture.

Q. Now, again, I ask you if we utilized the full figures for the years 1954, 1955 and 1956, rather than the figures which resulted from the mergers which had not taken place, these percentages would be somewhat different, wouldn't they?

A. They would be different.

- Q. Would they be different in the same general fashion as in the case of AR-59?
- A. That is hard to answer immediately, because we are [fol. 1759] dealing with insulated here as opposed to ACSR.
- Q. Let me ask you this, in the year 1955, in the column entitled "Primary Producers," you show 72.8 per cent?

A. Yes.

Q. Now, would that percentage increase or decrease if we made the same type of change that we did in AR-59?

A. If we showed only the integrated companies as they existed in 1955?

Q. Yes.

A. The percentage figure would be lower than shown.

Q. Would be lower!

A. Yes.

Q. And by the same token, the 27.2 per cent which appears in the "Other Producers" column would increase?

A. Would be higher.

Q. Yes. And directing your attention to AR-61 and specifically to the columns entitled "Primary Producers or Affiliates," and "Other Producers," are there any real trends shown in those two columns in your view?

A. Going from the year '54 to '61?

[fol. 1760] Q. From the year '54 to '61, yes.

- A. There seems, in this particular chart there would seem to be a slight tendency to decrease in the "Primary Producer" column, but it is not a great factor.
  - Q. Not too pronounced?

A. That would be right.

Q. And if we would make the same change in AR-61, in the year 1955, so as to represent actual conditions in the year 1955, would the 85.3 per cent in the primary column increase or decrease, if we represented actual conditions?

A. Since this is a combination, I would have to check it a second. The share of the integraters as they existed would

be lower than the 85.3

- Q. And what were you referring to when you drew that conclusion?
  - A. This is marked GX-438.

Q. Government Exhibit 438?

A. Yes, sir.

- Q. Now, Mr. Day, directing your attention to AR-62, which is entitled "Post-acquisition Growth of Integrated Producers of ACSR and Bare," now if you use the year 1959 in that tabulation as your base year instead of the [fol. 1761] year 1958, what changes would you make in the third broad column which is entitled "Other Producers"? I note that in that column for the year '59 you show a plus 36 per cent change and in 1960 you show a plus 27.5 per cent change and in 1961 a plus 32.5 change. Now I ask you if you changed your base year from 1958 to 1959, what would happen to those pluses in the year 1960 and 1961!
- A. If we had changed, if we had used '59 as the base yes, obviously the '60 and '61 years would show, well, '60 would show a very slight decline.

Q. It would show a negative number?

A. Would show a negative. '61 would probably come out negative, but it is quite close to the thirty-two million figure.

Q. What would you compare then in 1961 in pounds? You would compare the 31,132 pounds to 1959, which is 32,058?

A. Correct.

Q. So actually it would come out negative?

A. It would be negative, yes.

Q. It would be negative. And directing your attention to AR-63, if you change your base year from 1958 to 1959, [fol. 1762] would your percentage change figures in those columns change any?

A. You are talking of the "Other Producers" column;

are you?

Q. Well, we can talk about the "Other Producers" column, yes.

A. Is that the column you want?

Q. Yes.

- A. If we chose '59 as the base year there still would be pluses in '60 and '61. The magnitude of the increase would be lower than that shown here.
  - Q. Would it be very much lower?

A. Well, I can't do it that fast.

Q. You can't compute it.

The Court: I suppose that that would also apply to the

far column on the right; wouldn't it?

The Witness: Yes, sir. If we adopt '59 as the base year, in the Alcoa-Rome columns you are saying, your Honor? [fol. 1763] The Court: Yes.

The Witness: Well, that would show-

The Court: Decreases.

The Witness: Some big fat minuses for them.

The Court: What's that?

The Witness: That would show some large minus fig-

ures for Alcoa there.

The Court: So that that would mean, if I understand the table right, that since the Acquisition Alcoa-Rome had a smaller share of the aluminum insulated or covered wire and cable, is that right?

The Witness: Yes, sir, your Honor.

The Court: So while the integrated companies as a whole might have increased their share, these particular transactions which we are concerned with here resulted in a lessening of the share of the two companies directly involved?

The Witness: Yes, your Honor.

#### By Mr. Melchior:

Q. Now, Mr. Day, directing your attention to AR-54, what does this purport to show?

[fol. 1764]. A. This shows Rome's sales of weatherproof, their total for the years 1956 through 1960 in dollars, and shows the aluminum proportion as compared with the copper proportion.

Q. And with respect to AR-55, what does that show?

A. It shows Rome's sales of service drop cable in thousands of dollars, the years 1956 through 1960, the total value, and also the aluminum proportion and copper proportion.

Q. Now, I note that you compared these two types of conductors, aluminum and copper on a dollar basis; now, if you would have used a copper equivalent basis, would your percentages have been any different?

A. I don't understand copper equivalent.

Q. Do you understand what the term copper equivalent means?

A. Are we talking of a copper equivalent in weight?

Q. Well, as far as conductivity is concerned.

A. Well, yes, I understand what you mean by it.

Q. Well, if you would have worked this table out on the [fol. 1765] basis of copper equivalent for both these metals on a conductivity basis, would your percentages be any different do you know?

A. I couldn't answer that because I only worked with

available figures.

The Court: I don't believe I understand that. Say that again, Mr. Melchior.

Mr. Melchior: Well, I don't mean to imply I have a tech-

nical knowledge of this.

The Court: Neither have I.

Mr. Melchior: Aluminum and copper have different conductivity ratios.

The Court: Yes.

Mr. Melchior: As I understand it, copper conducts electricity more rapidly; copper is much heavier and there is a formula that can be worked out whereby you can determine on a conductivity basis in order to do the same job how much aluminum you would use and how much copper you would use to do the same job.

The Court: But in order to do that your would have to [fol. 1766] have—have to know the job requirement, I

Mr. Melchior: Yes, you would, and if the witness can't answer it I am not going to pursue it.

The Court: All right.

# By Mr. Melchior:

Q. Now, with respect to AR-55, did you utilize any company records in compiling this or was your source merely defendant's answers to interrogatories?

A. These were from company records.

Q. From company records?

A. Well, both. That Table 1 which I have shown there

was my source for these figures.

Q. You merely took the figures from that source and utilized them?

A. Yes.

Mr. Bergson: You don't question those figures, do you, Mr. Melchior?

Mr. Melchior: I don't. I am trying to find out how the

table was put together.

The Witness: I merely took the figures from that table and put them here.

### [fol. 1767] By Mr. Melchior:

Q. Now, I show you, Mr. Day, AR-68 and ask you if you are familiar with that document?

A. Yes, I am familiar with it.

Q. Now, what does that purport to show, Mr. Day?

A. Well, I believe in reading it, it purports to show data, a tabulation of data I believe in the insulated wire and cable field. I am not clear from this letter, however, if it includes all of the insulated wire and cable field or whether it refers to a portion of it. It speaks "further reference to your request for tabulation—"

Mr. Bergson: May I ask counsel if he has that request available.

Mr. Melchior: Beg pardon?

Mr. Bergson: Do you have the Justice Department re-

quest of the Bureau of the Census available?

Mr. Melchior: I am not sure that we do. It may have been an oral request. I did not make that request myself, counsel. We would have to check. We will be glad to inform you later.

[fol. 1768] Q. My question was really going to be this, Mr. Day. Does this reference to insulated wire and cable

to you indicate that all insulated wire and cable is included. in these figures?

A. I would take it the other way. That it refers to a

category so-called "Other insulated wire and cable."

Q. In other words, on the face of the document it does not appear to be all insulated wire and cable; is that correct f

A. That would be my reaction to reading this, yes.

Mr. Melchior: No further questions.

Mr. Bergson: Just one or two questions on redirect, your Honor, addressing ourselves to Defendant's Exhibit AR-68.

Redirect examination.

# By Mr. Bergson:

Q. I show you Defendant's AR-9 for identification, which is the 1958 "Census of Manufactures" report and ask you if you can tell from that what other wires or insulated wires and cable may have been omitted? [fol. 1769] A. Apparently Census code 33574, communication wire and cable; 33576, appliances wire and flexi-

ble cord sets. That would be it. Q. Did Alcoa ever manufacture any of those products

to your knowledge?

A. Not to my knowledge.

Mr. Bergson: No further questions.

Recross examination.

# By Mr. Melchior:

Q. I take it, Mr. Day, that from your knowledge of the Census of Manufacturers then the information appearing on AR-68 is not complete insofar as all insulated wire and cable is concerned?

A. That would appear so.

Mr. Melchior: It appears from the face of the letter that it is complete insofar as the Justice Department's request was concerned.

Mr. Bergson: But counsel doesn't know what that request 18.

The Court: No. Why don't you get the request.

[fol. 1770] Mr. Melchior: If we can.

The Court: And may be it can clear itself out.

Mr. Melchior: It might have been an oral request.

Mr. Bergson: It says "This is in further response to your request for special tabulation for 1958 on percentage of shipments of other insulated wire and cable products." That is all they wanted. They didn't get the right answer so they didn't use it.

The Court: All right. We will recess until two o'clock. The Clerk: The court is in recess until two o'clock.

(Whereupon at 12:45 p.m. an adjournment was taken to 2:00 p.m. of the same day.)

### [fol. 1771] APTERNOON SESSION

2:00 p.m.

The Court: All right, gentlemen.

Mr. Bergson: May it please the Court, during the noon recess counsel for the government made available to me copies of the letter requesting information from the Bureau, of the Census, and I would like to offer that letter in evidence as Defendant's Exhibit AR-68-A. It is a letter dated October 27, 1961, to Mr. Malcolm R. Conklin, chief of the industry division, Bureau of the Census, from Lee Loevinger, Assistant Attorney General, anti-trust division.

The Court: It may help to explain or understand Exhibit

68.

Mr. Bergson: That is the purpose I am offering it for.

Mr. Melchior: No objection.

The Court: Beceived.

(Defendant's Exhibit AR68-A marked received in evidence.)

Mr. Bergson: Mr. Fraser.

[fol. 1772] A. D. Ross Fraser, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

## By Mr. Bergson:

Q. Mr. Fraser, will you please state your name and address?

A. A. D. Ross Fraser, Golf Course Road, Rome, New York.

Q. By whom are you employed?

A. Rome Cable Corporation. I was the first employee.

Q. What position do you now hold with Rome Cable?

A. President.

Q. And how long have you been president of Rome Cablet

A. Since 1944.

Mr. Bergson: Your Honor, I propose to qualify Mr. Fraser not only-I mean use him not only as a fact witness but to qualify him as an expert in the wire and cable business. So I will ask more questions as to his background than I [fol. 1773] ordinarily would.

The Court : Go ahead.

# By Mr. Bergson:

Q. Mr. Fraser, where did you attend college?

A. Clark University in Worcester, Massachusetts.

Q. And what degree did you receive?

A. A.B., 1922.

Q. And after your graduation from college what was your first connection with the wire and cable industry?

A. I joined the Rome Wire Company in November of 1922 in the production department.

Q. And what were your responsibilities?

A. Well, I was production clerk and eventually became production manager. Later, when the company merged with General Cable in 1927 I was a staff man, statistician, assistant to the president.

Q. And while you were at Rome Cable as assistant to

the president-

A. General Cable.

Q. —General Cable, I mean, as an assistant to the pres-

ident, what did your duties encompass?

A. A wide variety of duties, and we had merged about [fol. 1774] sixteen plants and I was doing various jobs in connection with organizing production work, organizing accounting activities, doing special jobs for him, handling all the reports covering the operations.

Q. Did you in the course of that work have responsibility for analyzing the financial structure and products of other

companies in the industry?"

A. I certainly did. I compiled a complete history of all of the then companies in the wire industry, covering their financial structure, their sales structure, their products. It was one of the most complete books produced up to that time.

Q. Now, how long were you employed by the General Cable Company?

A. Until the end of 1933.

Q. Now, when were you first employed by the Rome Cable Company?

A. November, 1935.

Q. 19351

A. Before the company was actually incorporated I became an employee of the group that were forming it. We were incorporated January 20, 1936, however.

[fol. 1774a] Q. Now, during the period from 1933 to 1936 you were not in the wire and cable business?

A. That's correct.

[fol. 1775] Q. When Rome Cable was formed, what position did you hold?

A. I was secretary and a director. .

Q. Were you also a member of the executive committee?

A. I was.

Q. And you continued in that capacity until you became president?

A. I did.

Q. And that was in 19

A. October, 1944.

Q. Now, during the period that you have been president of the Rome Cable, have you continued to keep in touch

with the financial structure, the activities of your various competitors?

A. I have.

Q. And as President of Rome Cable, what were your duties?.

A. Well, I was the administrative officer who supervised all the planning and the administration of the duties of all the various departments.

Q. You were the chief administrative officer?

A. Right.

Q. You are familiar with a trade organization known as Nema; are you not? [fol. 1776] A. I am.

Q. That is what?

A. National Electric Manufacturers Association.

Q. How long have you been active in that association,

if you have been active in it?

A. Oh, I started the initial interest in the late 20s, and I think we joined in it in Rome Cable in the late 30s. I was instrumental in reorganizing and being chairman of the wire section for a period of time. I have been a director for a number of years. Was vice-president and treasurer at various times and last year I was president of Nema.

Q. And now you are president emeritus?

A. Emeritus, yes, that's right.

Q. I know you wouldn't tell us this unless I asked you? · Did you in November, 1961, receive the McGraw-Hill award for outstanding contributions in the electrical industry?

A. I did.

Q. Have you, during the course of your career in the wire and cable industry, been associated with any governmental bodies

A. I have:

Q. Would you please tell us what those are? [fol. 1777] A. During World War II, I aided the Wire and Cable Industry Committee. I was working with the equivalent of BDSA. It was WPB in those days. In the Korean upset I was a full-time member of the Committee on Operating under NPA, I think it was.

Q. National Production Authority?

A. National Production Authority. And in that capacity

I worked on certain subcommittees during the crisis of the copper situation and supply.

Q. Was the NPA part of the Department of Commerce?

A. Yes.

Q. And was that a predecessor organization of the Business and Defense Service Administration?

A. It was.

Q. Now, Mr. Fraser, prior to its acquisition by Alcoa, would you describe for the Court the general character

and the business of the Rome Cable Corporation?

A. The Rome Cable Corporation was a wire and cable operation mainly, since its start in the copper field. We were the first company others than integrated company, to have a rod mill for copper rolling. However, we were mainly an insulator of wire and cable and had an expansion of our products in that area. Would you like me to talk [fol. 1778] about the products or the distribution?

Q. Just generally about the products.

A. We were national distributors selling through our own salesmen. I can't remember how many offices we had now, but somewhere around 20. We had several warehouses. Our Rome plant was entirely a wire and cable

operation.

In 1950 we acquired a small operation in Torrance, California, which made at that time just EMT conduit. Later we produced rigid steel conduit at that plant. And on April, 1957 or 8, I can't remember just which, we also acquired a small operation in Collegeville, Pennsylvania, which is must outside of Philadelphia, and that made cable support systems, troughs, trays, and certain items for the utility companies as well.

Q. Have you finished?

A. I think I have unless there is some other angle you want me to comment upon.

Q. I think that is fairly comprehensive. As an insulator of wire and cable products, what types of metals did you

use as conductor?

A. Well, up until 1950 it was exclusively copper. I think [fol. 1779] '50 or '51. And then we began also to use aluminum. So copper and aluminum were our two main metals, although during World War emergency we even insulated jute.

Q. Did you ever insulate string?

A. Well, that is nigh on to string.

Q. Now, how many products would you say generally, I don't mean size and colors and things like that, but different products, wire and cable products, did Rome make prior to its acquisition by Alcoa?

A. If we are talking about main class, I would say about

25. Are you talking about insulated only?

Q. Insulated.

A. Oh, pardon me. Oh, 12, 14, I would say.

Q. And within the main classification, about how many styles would you say you manufactured?

A. You mean sub products?

Q. Sub products.

A. We have never gotten an accurate count of that, but that runs into the hundreds; if you include colors and combinations, you would go into the thousands.

Q. Now, of those products, you also said you made bare

wire and cable?

[fol. 1780] A. Yes, sir, solid and stranded, both copper and aluminum.

. Q. And did you make a product known as ACSR?

A. Only in a limited size, up to size 4/0.

Q. So what products would you say that Rome was making prior to the acquisition that Alcoa was also making or selling?

A. We were making—

Q. —at the time of the acquisition?

- A. We were making ACSR up to 4/0, the all aluminum cable, I think we could make up to a million or even a little ligher than that, we made polyethylene line wire and polyethylene service drop. I think those are the only ones there was an overlap, which is covered very well by this chart.
- Q. This chart, you are referring to Defendants' Exhibit AR-20, a color photo of which has been introduced in evidence?

A. Yes, I should remember that, having been repeated so many times.

Q. Now, what would you say was the conductor metal that was used predominantly by Rome prior to its acquisition by Alcoa?

A. Copper.

[fol. 1781] Q. And to how large an extent would you say that copper was used as compared to aluminum at the time of the acquisition?

A. Well, just what do you mean by that?

Q. Well-

A. (Interrupting) A percentage?

Q. What would be the percentage, if you know?

A. That, of course, varies. If you take it as a percentage of purchases of aluminum versus purchases of copper, I would say it was somewhere in the nature of 95 or 96 per cent, something along there.

Q. And if you take it by sales of aluminum products

versus copper products?

A. I would say probably 90 per cent.

Q. Now, Mr. Fraser, I show you Government Exhibit GX-52, which is a copy of a speech that you made to the Rochester Society of Investment Analysts on January 16, 1957, and I invite your attention to the sentence that begins on the bottom of page 12 and continues on the top of page 13. Would you read that?

A. "In the last five years aluminum has become an important base conductor for insulated wire. In 1952 it only represented 5 per cent of our total volume in copper equiv[fol. 1782] alent, whereas in this last year it has climbed

to almost 25 percent of our total."

Q. Now, what did you mean by the phrase "copper equivalent"!

A. Well-

Q. This has been asked before and now we have an expert

to tell us about it.

A. Aluminum weighs about one-third the weight of copper, and therefore from an angle of footage we use three times the footage in order to correct for the difference in weight. This statement which was made in that speech took all of our copper which we produced—we produced quite a considerable amount of toll copper, you understand, for other people, and included also the toll aluminum that we were producing for Alcoa, because since the early 50s we had been a toll insulator for Alcoa. So by adding the Alcoa-provided aluminum to that which we were producing and selling in our own right, and multiplying that

figure by 3, we came up in the year 1956 to about 25 per

cent of the total volume. I have here figures-

Q. (Interrupting) Well, before you answer that, let me [fol. 1783] ask you this question If you had been talking to the Rochester analysts and had given them the information in poundage rather than in copper equivalent, what would the percentage have been?

A. About one-third of that.

Q. And if you had been talking in terms of dollars, what would it be?

A. It would be less than that. I gave you the figures on

purchases, copper was in the middle 90s, as I recall it.

Q. So about 5 per cent?

A. About 5 per cent. I would like to say this, too, that the type of product which we were covering, the aluminum covered product, required less operations in the mill, so there were many more hours proportionately put on the copper products than there were on the aluminum.

Q. Now, have you any figures to indicate what the copper equivalent usage of Rome was in the years 1957 and '58, the two years subsequent to this speech to the Rochester analysts and the two years immediately prior to the

acquisition by Alcoa?

A. In 1957 the copper equivalent was 18.1 per cent; in

[fol. 1784] 1958 it was 18 per cent.

Q. Now, Mr. Fraser, before we go on, I would like to bring up to date some charts that we put in evidence, just so that they will be complete. We have the 1961 figures, your Honor, that were not available at the time the charts were prepared, and I would like to ask Mr. Fraser to give them to us and maybe you could write them on your copy of the charts as he gives them to us. Would you look at Defendants' AR-54?

A. Yes, sir.

Q. Do you have comparable figures to those stated in the chart for the year 1961?

· A. I do.

Q. Would you please state what they are?

A. In 1961 the total value was 1,461,000; the aluminum was \$329,000; the aluminum percentage was 22.5. The copper value was \$1,132,000; and the percentage 77.5 per cent.

Q. Now, would you turn to Defendants' Exhibit AR-55. the next chart, and give us the 1961 figures? This is serv-

ice drop cable.

A. The 1961 figures to be added to AR-55, are as follows: Total, 2,211,000; aluminum 1,857,000; total 86 per cent. Copper. 354:000: 16 per cent.

[fol. 1785] Q. Now, will you please turn to Defendants' Exhibit AR-56 and give us the comparable figures for '61,

for that chart?

A. The comparable figures for the year 1961 for AR-56 are as follows: Total 3,672,000. Aluminum value, 2,186,000; 59 per cent. Copper value, 1,486,000; 41 per cent.

O. Now. Mr. Fraser, where did you obtain these figures

from ?

A. From our company records.

Q. Now, Mr. Fraser, do you know why Defendants' offered Chart 56, which is a combination of charts AR-54 and 55?

Mr. Melchior: I think that is an improper question. How would he know why Defendants offered it?

Mr. Bergson: Well, he is a defendant.

The Court: I will overruled it and see if I get some explanation.

The Witness: Overruled, is it?

Mr. Bergson: Yes. The Court: Yes.

A. Because we have no way as a manufacturer of knowing what happens to weatherproof as far as service drop [fol. 1786] is concerned, so we combined the two so there would be-

Q. Do you mean by that, and I don't know how to ask

this question, is weatherproof used as service drop?

A. Yes, sir. But we have no way of knowing except by going around and asking individual utilities whether they use it.

Q. Let me ask you the other question. Is triplex used in place of weatherproof?

A. No.

Q. Is triplex used for secondary distribution?

A. Yes.

Q. By utilities?

A. Yes.

Q. Would you have any way of knowing when triplex is purchased whether it is used for service drop purposes or secondary distribution purposes?

A. Our sales department, our engineering group would

know, but I wouldn't be apt to know that.

Q. Now, Mr. Fraser, in the course of conducting your business did Rome, and does Rome, periodically review its production line to see whether or not certain products should be added to the line or certain products should be [fol. 1787] dropped from the line?

A. Constantly. Never ending.

Q. Why is this?

A. Well, we want to keep ourselves up to date. We are also interested in whether we are making any money in the product line; whether we are maintaining our service to our customers or whether there are some new uses to which our equipment can provide material and make greater use of our equipment. In fact, we consider it a matter of good operations to be on the ball as far as what is going on in our industry. It is important to our employees in providing them with good employment.

Q. It is question of determining what product lines are

being used and also what product lines are profitable?

A. That's right.

Q. Did Rome Cable, to your recollection, ever purchase any equipment to be used for the production of one product and after its installation used it for an entirely

different product?

A. Yes. A very good example of that is, I think has been brought out here. There is a big market for certain communications cables and we bought certain twisters and [fol. 1788] cablers to enter that particular field. When the equipment arrived and there were certain changes in the market structure on the particular products which we could make, and it so happened that the production then and the market demand had become very great for instrumentation cable and the start of the missile cable type which we envisioned as a very good field for us, with our research and engineering background, to put that equipment to use, and that is what was done with it.

Q. From your knowledge of this, is this practice of re-

viewing production lines a common practice in the indus-

trv!

A. I would definitely say so, because in periods of intense competition in certain products, it is quite general for companies to evaluate their insulated or other products that are in demand and see what they can do towards getting into that field.

It is a very normal type of operation for alert people.

Q. Now, in your operations at Rome Cable, did you watch what other companies were doing and adopt products that were developed by them and put them and put them into [fol. 1789] your line?

A. One of the continuing pleas to our sales organization, to our engineering group, to our suppliers, was to be kept posted on what was new in the market place. And that went into new insulations, new packages, a whole variety and host of things that would make a product more appealing to the customer.

Q. When you talk about "new packages," do you mean

packaging materials or-

A. Even new packages, I mean. In some cases, for example, we found that it was much better to have wire in a 500-foot length than in a 5,000-foot length for the use of a customer.

Q. Now, conversely, did Rome develop products that were subsequently adopted by other wire and cable manufacturers?

A. Very definitely.

Q. Was triplex one of those products?

A. Yes, sir.

Q. When did Rome develop triplex?

A. In 1948 and '49.

Q. And with what coverings did Rome cover that triplex?

A. Polyethylene and neoprene. I don't remember which were first, but those were the two.

[fol. 1790] Q. And what was the conductor that was used?

A. Copper. We didn't have any aluminum at that time. ..

Q. Now, directing your attention now to the overlapping product, what was Rome's pricing policy in regard to those products?

A. Well, we issued a price sheet and generally we followed that price sheet.

Q. Would you characterize yourself as an aggressive

competitor in those products?

A. No, sir. If you mean by aggressive competitor, price cutter, no.

Q. That is what I mean.

A. But we were an aggressive competitor.

Q. Now, Mr. Fraser, when did Rome Cable first insulate aluminum wire or cable?

A. That was towards the end of 1951.

- Q. And what were the circumstances which brought that about?
- A. Well, copper and aluminum were both scarce and under allocation during the Korean War, and my recollection is that in the last quarter of 1951 there was allocated to the wire and cable industry 200,000 pounds of aluminum for the full quarter of, last quarter of '51.

[fol. 1791] Q. And did Rome Cable apply for some of

that allocation!

A. We did.

Q. And do you remember how many other companies

applied for part of that allocation?

A. Well, I don't know how many applied, but there were eight allocations given, as I recall it. There may have been more applied.

Q. And to whom were those allocations given, if you

know!

- A. Alcoa—these are some I am quite sure of—I am not sure of the whole eight—Alcoa, Kaiser, Rome, General Cable, Anaconda, I believe Essex, but I am not sure of that.
  - Q. Reynolds?

A. I do not believe Reynolds got any at that time.

Q. But to the best of your recollection or knowledge, eight companies participated in that allocation?

. A. Yes, sir.

Q. For 1951!

A. Yes, sir.

Q. Now, Mr. Fraser, I show you a copy of a directory of aluminum suppliers dated April 1, 1961, put out by the United States Department of Commerce, Business and De-

fense Service Administration, which has been marked for [fol. 1791a] identification as Defendants' Exhibit AR-5, and ask you if you can tell from this exhibit how many companies are listed as manufacturing wire and cable!

A. You mean insulated only or— Q. ACSR and aluminum cable, bare.

A. Eleven.

[fol. 1792] Q. And how many as insulated?

A. 29.

Mr. Bargson: I offer Defendant's Exhibit AR-5 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-5 for identification received in evidence.)

## By Mr. Bergson:

Q. Mr. Fraser, going back to this 1951 date, you said that you didn't know whether there were any other applicants for the 200,000 pounds than the eight; do you know how many companies were engaged in the business of manufacturing ACSR or aluminum insulated products in 1951?

A. Well, there was Alcoa, Kaiser, Reynolds, Southern Electric, Nehring, South Wire, Central, General Cable—

wait a minute-1951?

Q. 1951, yes.

A. I am not so sure that there was aluminum available for—

Q. No, whether they were in the business of manufactur-

ing aluminum wire and cable.

A. The only ones that were in the business would be [fol. 1793] Alcoa, Kaiser, Reynolds. I would say that was it.

Q. And the others of the eight that you are talking about were initially getting into the insulating or making of aluminum wire and cable at that time?

A. I would like to add that Southern Electric I know was in the aluminum wire business. I knew that positively at that time.

Q. So that to the best of your knowledge prior to the time

of this allocation there were four companies manufacturing aluminum and there were eight that got an allotment under this first allotment.

A. That's right, but that was an allotment for covered

aluminum, not bare.

Q. I understand. Now, Mr. Fraser, I show you a document entitled "Primary aluminum output gains strongly," put out by the Business and Defense Services Administration of the United States Department of Commerce, under date of April 11, 1961, which has been marked for identification as Defendant's Exhibit AR-70, and I ask you to look at the second page of that document and tell us what [fol. 1794] it shows as to the number of companies listed as primary metal producers in 1950.

A. Three.

- Q. 1955?
- A. Four.
- Q. 19601
- A. Six:
- Q. Now, dropping down to ACSR, the number of companies listed for 1950.
  - A. Twelve.
  - Q. 1955.
  - A. Twelve.
  - Q. 1960.
  - A. Eleven.
  - Q. And for wire, insulated covered wire and cable?
  - A. 1950 says "Not available."
  - Q. And 1955?
  - A. Forty-eight.
  - Q. And 1960?
  - A. Forty-seven.
  - Q. And for extruded shapes and drawn tube.
  - A. 1950, 39; 1955, 110; 1960, 133.
- Q. Now, do you know how aluminum conduit is made? [fol. 1795] A. Yes, sir.
  - Q. How is it made?
- A. It is extruded pipe which then has the threads put in it and something inside the tube.
  - Q. It is extruded pipe?
  - A. It is extruded pipe.

Mr. Bergson: I offer Defendant's Exhibit AR-70.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-70 for identification received in evidence.)

### By Mr. Bergson:

Q. Now, Mr. Fraser, you told us that Rome Cable got into the aluminum phase of this insulated wire and cable business as a result of an allocation in 1951.

A. That is right.

Q. Now, do you know what new equipment Rome required in order to get into this aluminum wire and cable insulation?

A. We needed no new equipment to get in for that which

was necessary at that time.

[fol. 1796] Q. Did you hear Mr. Ellis testify?

A. Yes.

Q. Was his testimony substantially correct?

A. Yes, sir.

Q. So far as your knowledge?

A. Yes, sir.

Q. Now, did Rome at any time give consideration to going into the production of larger sizes of ACSR?

A. We gave consideration to it.

Q. Did you reach a determination as to what you should do regarding it?

A. Decided not to do it.

Q. When did you decide not to do it?

A. The subject was brought up at various and sundry times, and each time we came up with the same answer.

Q. Do you remember the last time it was brought up?

A. Well, I presume in our reconsideration of products it could have been brought up in 1958. We examined those things at periodic times and decided against it.

Q. Why did you decide against it?
[fol. 1797] A. Well, we looked at the profitability of products and where we could put our money to best return for our share owners, and with what was involved of increase in organization and increase in equipment we felt

that our area of activity was more in the insulated products and the smaller sizes of ACSR, to a limited extent.

Q. What do you mean by a limited extent, the smaller

sizes of ACSR!

A. To a limited extent, in any case you are limited by the fact that some customers will not split an order, for example, if they are buying large sizes and small sizes they won't favor you with giving you just the small sizes and somebody else taking the large sizes. We had that situation in our Torrence plant when we only had thin wall conduit. It was necessary for us to have rigid conduit along with it.

Q. So you limited yourself to the smaller sizes of ACSR?

A. It did not require the engineering or the equipment

expenditure.

Q. Now, Mr. Fraser, did there come a time when Rome acquired a rod making machine? [fol. 1798] A. Do you mean a drawing machine for aluminum f

Q. For aluminum.

A. You mean rolling?

Q. No, I mean a continuous casting machine.

A. Yes, a Properzi. I think we acquired that-well, actually it was installed in early 1953. I think we got our first production-

Q. When did you get your first commercial production

from that?

A. The latter part of 1953, as I recall it. It took us about seven or eight months.

Q. Now, Mr. Fraser, what is an ER?

A. An ER is an executive request for an expenditure, and our policy in our company was that at the end of the calendar year or towards the end I would ask our manufacturing, our engineering, our research; our sales department to set down all of the new equipment which they felt was necessary for the next year. There was no limit put on them at that time of that request. That could be for new products, it could be for expansion of present products, it could be for improvement of quality, it could be for cost [fol. 1799] reduction, it could even be for health reasons.

Q. Well, now, when did you receive the first ER for the Properzi equipment?

A. I think it was November of 1951. I have got it right here somewhere—it is dated November 8, 1951 and I signed it November 9, 1951. That was not actually in production according to this until March 31, 1953.

Q. When were the funds for the Properzi equipment

actually expended?

A. I would assume—it doesn't say when it was delivered here or when we paid the bill, but I would assume that about two thirds of that was six months after this date here, and then of course you have all the installation charges

and foundation charges. This does not detail that.

Q. Now, I show you government's Exhibit GX-68 which contains this statement, "In respect to the equipment \$336,000 approved to date on ER's and Ellis advises that the furnaces have been promised for May and they should be ready in July" et cetera. Does that mean that at that date final determination had been made for the installation of that equipment?

[fol. 1800] A. Not until this was actually approved, is the only time that actually—There was no authority to

place the order unless this was signed.

Q. What is "this"?

A. This is the ER.

Q. And when was that?

A. That was November 9, 1951.

Q. That was prior to that.

A. It states that these were approved ER's, but after that the engineering department would come up with their specifications and in some cases there might be changes in them.

Q. But in any event, Mr. Fraser, Rome was in the business of drawing, stranding and insulating aluminum for how long a period prior to the time you were using your

own rod?

A. Insulating, we were insulating by buying a conductor. The drawing came nearer the period of the rod and we converted an old copper elevator supply machine to aluminum by changing the dip. I think the cost of that ran into something like \$5,000 or so. Stranding was no problem of conversion at all.

Q. Was insulating any problem of conversion? [fol. 1801] A. No. No.

Q. Now, from your knowledge of the industry is there any problem involved in making the transition from drawing, stranding and insulating copper wire to the insulation, the drawing, stranding and insulation of aluminum wire?

A. Well, as has been testified here, many companies produce copper and aluminum on the same drawing machine by a good clean-out of the machine and a different dip system. The stranding presents no problem and the

insulating presents no problem.

Q. Now, Mr. Fraser, I would like to talk a little bit about the structure of the wire and cable industry. Do you know how many companies there are in the wire and cable industry!

A. Well, over two hundred I would say. I have seen as

high as 275.

Q. And could you tell us the names of some of the principal companies in the wire and cable industry?

A. General Cable, Anaconda, Phelps-Dodge, Kaiser.

Q. Not too fast, please. Mr. Jordan has got to spell these [fol. 1802] names.

A. Reynolds, Olin, Essex, Triangle, Crescent, Simplex, Walker Brothers, Narragansett, American Insulated, Collyer, Hudson Wire, Camden Wire, Detwiler's

Q. Central?

A. Central. Nehring, South Wire, Crescent Company as well as Crescent Insulated. Suprenant.

Q. S-u-p-r-e-n-a-n-t?

A. Superior Cable, Warren Wire, Acme Wire, Belden Manufacturing, American Steel and Wire.

Q. American Steel and Wire, what company is that?

A, That is a division of the United States Steel Company. You got Royal Insulator, which is a division of I. T. & T. So is Suprenant now. Boston Insulated; H. K. Porter, Western Insulated, which is a division of Erie Company, Kerite, the Okonite division of Kennecott.

Q. How about General Electric?

A. Oh, yes, General Electric, one of the large ones. I am sure with a minute or two more I could produce a great many others. There is Chester Wire and Cable. Q. How about Continental Steel?

A. A very big one. Continental Steel. Copperweld Steel.

Q. Well, I think that is enough.

A. Circle. Rockbestos, they are a part of Cerro de Pasco. Rea Magnet Wire.

Q. They are a part of Alcoa?

A. A part of Alcoa.

Q. I think you have done a pretty good job, Mr. Fraser.

Mr. Bergson: I would like to have this marked.

(Document entitled "List of companies and plants producing copper wire and cable" marked as Defendant's Exhibit AR-71 for identification.)

#### By Mr. Bergson:

Q. I now show you a document which has been marked Defendant's AR-71 for identification which is entitled "List of companies and plants producing copper wire and cable" promulgated by the United States Bureau of Commerce, Business and Defense Services Administration, July 10, 1958. I am not going to ask you to read into the record all [fol. 1804] the companies listed thereon, but do you consider that to be a reasonably accurate list of the companies in the business at that time?

A. I would say that is a very good list. There are only three or four that I missed of major character, I think.

Q. I think there is one that you missed.

A. Plastic Wire and Cable.

Q. How about Alcoa?

A. I thought that you didn't want our own.

Q. Oh, I am sorry.

A. I assumed that was part of the record.

#### OFFERS IN EVIDENCE

Mr. Bergson: I offer Defendant's Exhibit AR-71 for identification.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-71 for identification received in evidence.)

Mr. Bergson: I would like to offer at this time, your Honor, two additional exhibits. One is Defendant's Exhibit AR-72, which is an exhibit containing the financial sta-

tistics of some of the wire and cable companies and some of the conduit producers all of whom, and completely inclusive [fol. 1805] of those in Moody's Industrial Manual. I offer this as defendant's group Exhibit 72.

The Court: What am I supposed to do with it?

Mr. Bergson: I think it will help to fill up the clerk's files. But the purpose of it is that one of the factors that are considered in this case is the strength of the remaining competitors, and it is offered for that purpose. We will call your attention to important phases of it in our briefs, and I am sure you won't have to read it yourself.

Mr. Melchior: What numbers are they, Mr. Bergson?

(Discussion between Mr. Bergson and Mr. Melchior.)

The Court: I will receive it.

(Defendant's Exhibit AR-72 received in evidence.)

Mr. Bergson: I would like also at this time, your Honor, to offer excerpts from a volume entitled "Wire and wire [fol. 1806] products buyers guide." It is a list of the companies in the wire industries. It is a recognized guide for purchasers of wire and cable products. The pages that I am offering are those with regard to wire and cable products. This I would like to offer as Defendant's Exhibit AR-73.

Mr. Melchior: May we have the page numbers?

(Discussion between Mr. Bergson and Mr. Melchior.)

Mr. Melchior: No objection, your Honor.

The Court: Received.

(Guide marked as Defendant's Exhibit AR-73 in evidence.)

The Court: Are the pages that you want marked in some way in the exhibit?

Mr. Bergson: We have a cover page, your Honor. We have an introduction and then we have the pages entitled "Wire, electric wire and cable."

[fol. 1807] The Court: Oh, I see.

Mr. Bergson: I have the guide itself if you would like to see it.

The Court: No.

#### By Mr. Bergson:

- Q. Mr. Fraser, is it standard industry practice to regard insulators of wire and cable as being insulators of copper wire and cable on the one hand and aluminum wire and cable on the other hand?
  - A. No, sir.
  - Q. What is the standard practice.?
  - A. To regard them as insulators.
- Q. Now, is there a wire and cable section of the National Electrical Manufacturers. Association?
  - A. Yes, sir.
  - Q. This is the group of which you are president?
  - A. I was chairman.
- Q. And of which you were chairman of the wire and cable section for many years?
  - A. Yes, sir. Yes, sir.
- Q. Does the membership of that group consist of insulators of both aluminum and copper wire and cable?

  [fol. 1808] A. Yes, sir.
- Q. Is there a section for copper and a special section for aluminum?
  - A. No, sir.
- Q. Now, Mr. Fraser, are you familiar with the 1958 Census of Manufacturers relating to non-ferrous metal, mill and foundry products?
  - A. Reasonably so.
- Q. I show you a copy of the 1958 Census of Manufacturers relating to non-ferrous metal, mill and foundry products which has been marked Defendant's Exhibit AR-9 for identification, and I invite your attention to page 22 thereof.
  - A. Yes.
- Q. Are the products shown on those pages insulated wire and cable products, 22 and 231
- A. I am looking—yes, sir, from the middle of page 22 and all of 23.
- Q. Does the Census of Manufacturers in classifying wire and cable products make any distinction between copper and aluminum?
- A. No. In fact the very first item says "Coaxial cable, lead or aluminum sheath and flexible—" I can find no such [fol. 1809] separation.

Q. Now, turning to Table 6, Table 6-A, page 20, does the Census of Manufacturers make any distinction between bare aluminum wire and cable and copper wire and cable?

A. Product code 33571 and 33521 is entitled "Aluminum and aluminum base alloy wire and cable (including ACSR)" Section 33572 says "Copper base alloy wire (including strand and cable, bare and tin, for electrical transmission)-". There are a number of others which go on. Do you want me to read them?

A. No, that is enough. So that the Census of Manufacturers in bare wire and cable makes a distinction between copper and aluminum but does not make such distinction insofar as insulated wire and cable products is concerned.

A. That is correct.

Mr. Bergson: I offer Defendant's Exhibit AR-9.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-9 for identification received in evidence.)

[fol. 1810] The Court: I assume that is on the theory of a line of commerce.

Mr. Bergson: Yes, your Honor, this is to show the Census of Manufacturers, the industry, nobody makes this artificial distinction that the government is making.

The Court: Well, if the government can get me to do it, then they are okay.

Mr. Bergson: They are better off, anyway, I don't think they are okay, they still have to show a lessening of competition.

The Court: We will find that out two or three years from now.

Mr. Bergson: I would like at this time, your Honor, to offer as Exhibit AR74 certain pages from the Standard Industrial Classification Manual, promulgated by the Executive Office of the President, Bureau of the Budget. . Now, the pages that I am offering are the entire introduction, the one page that talks about these insulated products, which says "Drawing and insulating of non-ferrous [fol. 1811] wire," as a census category, it says "Establishments primarily engaged in drawing and insulating

wire and cable of non-ferrous metals" and the entire appendix which has general comments. What I am omitting are the classifications of all the other industries.

I have the Standard Industrial Classification Manual available here, but I think that again that would just clutter up the file.

ter up the file.

Mr. Melchior: Do you offer it?

Mr. Bergson: Yes.

Mr. Melchior: What number?

Mr. Bergson: AR-74.

Mr. Melchior: No objection.

The Court: Received.

(Defendant's Exhibit AR-74 marked received in evidence.)

#### By Mr. Bergson:

Q. Now, Mr. Fraser, as president of Rome Cable Corporation and with your broad knowledge of the wire and cable industry, how would you classify competition in the [fol. 1812] insulated wire and cable business?

A. Exceedingly rough.

Q. What do you mean by that?

A. Ver@competitive.

Q. There is intense competition?

A. Right.

Q. Now, I would like now to invite your attention to the beginning of Rome's contractural relation with Alcoa, other than as a purchaser of metal. The government has introduced in evidence documents relating to a tolling arrangement between Alcoa and Rome. Would you tell us briefly what that tolling arrangement was about and how it came about?

A. Yes, sir. As I detailed earlier, there became an increasing interest with the allocation of metal by NPA and in the insulation of aluminum wire and cable. We had done some of it, as I detailed earlier, and one day I received a call from Mr. Ralph Davies.

Q. Would you identify him?

A. Ralph Davies was then vice president and general sales manager of Alcoa. And I had known Mr. Davies and [fol. 1813] he said that they felt that they should be-

come an insulator of aluminum. They were the largest o producer and inventor of ACSR and all aluminum cable, and they felt that they should enter the insulating field. They wanted to know if they could come and talk with us and perhaps enter into an arrangement whereby we could provide know-how as to how they could get into the business, order equipment, help them get the various factors that were necessary in order for them to get into the insulated business. I said we would be glad to have them come and visit us, and when they did come and visit us we took them for a trip through the plant and after that in a discussion with them we made the suggestion for their. consideration that if they wanted to provide us with the conductor, that is, either the solid conductor or the stranded conductor in aluminum or the ACSR conductor, that we would be glad to work up a tolling arrangement with them. In other words, that we would give them a price for our services, and that they would then sell the product, we would ship it to wherever they wished it to go.

[fol. 1814] Q. This was at what period?

A. 1952, as I recall it, early 1952.

Q. And at that time did you consider Rome to be a skilled insulator of wire and cable products?

A. We certainly did.

Q. What happened as a result of this discussion of yours?

A. They took the idea back to Pittsburgh, talked it over, and we received a call that they would be interested in our working up some figures in that connection, which we did by the various sizes and types, and out of it, after certain other negotiations regarding the various details and mechanics of handling things, such as stocks and so forth, we entered into a tolling arrangement agreement with them in a letter which I believe is part of the record.

Q. This was sometime in March?

A. In March of 1952, as I recall it.

Q. Now, at the time that you entered into this tolling arrangement, was anything said as to the permanence of the arrangement?

A. No, we were both very frank about it. We didn't know [fol. 1815] how it would work out as far as we were concerned, and they said they did not expect to go into the insulating of wire for—I just don't recall the period now,

but we felt that, and the final agreement gave both companies plenty of time to operate under the arrangement, and the letter as I recall it said that if Alcoa after such and such a date should decide that they wanted to insulate products themselves, they would give us a notification of nine or twelve months.

Q. Did they ever give you such notification?

A. Yes, I think it was in 1955 or thereabouts they said they had decided to insulate their own polyethelene, and plenty of time was given during that period. They even said that some of the special types of polyethelene we would continue to make, and they were not going to neoprene insulate any at that time and that we could consider up to another date that they would expect to get all their neoprene insulated products from us.

Q. Now, when Alcoa began to insulate its own polyethelene products, were you left with idle equipment on [fol. 1816] your hands?

A. No, sir.

Q. Will you explain how that happened?

A. Well, the bane of the average manufacturer's existence is that if any equipment becomes idle how he is going to use that equipment. We were able to use it, and I think Mr. Ellis explained this, for plastic building wire, for certain of the other products that we were working on. We had plenty of time to make the switchover.

Q. Now, did there come a time during the course of the tolling arrangement when Alcoa advised you that it was contemplating going into the manufacture of neoprene wire and cable, neoprene covered wire and cable, insulated?

A. I don't recall that we had any official notice; we certainly had from our initial conversations expected that that might be so.

Q. Now, during the period that we were talking about, were there any discussions between you and Alcoa—this is the period prior to 1957, the—

A. No-

Q. Let me finish the question. 1952 to 1956, regarding [fol. 1817] merger or acquisition?

A. No, sir.

Q. Now, when was the subject of merger between Alcoa and Rome first brought up?

The Court: I guess you are starting a new subject.

Mr. Bergson: Yes.

The Court: Take a short recess. The Clerk: The court is in recess.

(At this point a recess was taken after which the trial was resumed.)

(After recess.)

## By Mr. Bergson:

Q. Mr. Fraser, before we get into the merger discussions there is one question that I would like to ask you. When Alcoa began to manufacture its own polyethelene covering wire and cable, did it sell any product other than those listed on the product board?

A. Not to my knowledge.

Q. Now, I think there was one thing that you indicated during the recess that you would like to correct. When I asked you whether, when we included weatherproof and service drop in the same chart that the reason that that [fol. 1818] was because the triplex that is used in service drop is also used as secondary able.

A. Correct. I thought I corrected that earlier.

Q. Well, it is clear now.

A. Now to the subject of the merger discussions. When did the first discussions take place?

A. In July of 1957.

Q. Now, how many discussions took place during the course of-in that period?

A. There was a maximum of three. I think it was just

two, but I am not quite sure of that.

Q. Did Alcoa make an offer to Rome Cable to acquire Rome Cable?

A. They did.

Q. And what happened to that offer?

A. The directors of Rome Cable felt that the offer was not large enough and we voted to decline, and we parted friends.

Q. Do you recall how much Alcoa offered at that time?

[fol. 1819] A. As I recall, it was in the neighborhood of 22 million dollars. It might have been a bit more, but not much.

Q. So that at that time—when did you decline the offer?
A. I think it was in September of that year, or maybe
October. Somewhere around there.

Q. Did there come a time when merger discussions were resumed between Alcoa and Rome?

A. Since I was making one of my periodic visits to Pittsburgh discussing—

Q. When?

A. In October of 1958. At that time Mr. Davies asked me if we had any different feeling or wished to have some further discussion or if he thought our board might be interested in it. At that time I said if he was thinking of only making the same offer that he might better, while I could not speak definitely for the board I felt that it would be turned down again.

Q. Did Mr. Davies ask you to make a counter proposal?

A. He did.

Q. And did you do of [fol. 1820] A. We did.

Q. And do you recall what that counter proposal was?

A. It was four shares of Rome Cable for five—the other way around—around four shares of Alcoa for five of Rome.

Q. And was that offer accepted?

A. No.

Q. Did Alcoa make a counter offer?

A. In January of 1959 a counter offer of three for five was made, which amounted to thirty-three or four million dollars, and we submitted that to our board of directors. Our board of directors voted to submit it to the share owners and that was done. The share owners voted almost unanimously to accept the offer, and on April 1, 1959 we became a division of Alcoa, a separately incorporated Rome Cable Corporation of Delaware, whereas we had been Rome Cable of New York before.

Q. Now, Mr. Fraser, you said that discussions were resumed in October, and the offer was finally accepted or made in January of 1959?

A. Right.

Q. Were there frequent discussions between October and [fol. 1820a] January!

A. Not any group discussions.

[fol. 1821] Q. No discussions at all?

A. No, no group discussions at all.

- Q. When you say no group discussions, what do you mean?
- A. I mean no members of Alcoa or the Rome organization.
  - Q. Discussed it with one another?

A. Discussing it with one another.

Q. Now, Mr. Fraser, during the course of the negotiations, did any Alcoa official use any threat whatsoever on you?

A. Absolutely not.

Q. During the course of the negotiations was there any discussion as to the existing competition between Rome and Alcoa?

A. No, sir.

- Q. Did Alcoa tell you why it was interested in acquiring Rome?
- A. Yes, they wanted to expand their line of products in order to be competitive with others in the industry, diversify their products.
  - Q. Insulated product line?

A. That's right.

Q. Now, what were Rome's reasons for entering into

[fol. 1822] Mr. Melchior: If I may interrupt at this point, your Honor, I think I ought to make the objection for the record. It is the position of the government that the reasons for the merger, even good reasons and good motives, are not relevant to a consideration of the probabilities, and I would cite in that respect the authority of the Bethlehem case where that very question was raised. Defendants in this case, according to the Court, "earnestly wirged that in considering the impact on competition of the proposed merger, that the Court take into account what they point to as its beneficial aspects, and they said that any lessening of competition resulting from the merger should be balanced against the benefits which would

accrue from the Bethlehem's plan to expand the Youngstown plants, thus creating new steel capacity in an existing deficit area and enhancing the power of the merged company to give United States Steel more effective and vigorous competition, than Bethlehem and Youngstown can new give separately. They urged that because the capacity was severely limited in the Mid-West, and Bethlehem's strength [fol. 1823] was on the East Coast and West Coast, the addition of Youngstown who was strong in the central part of the country would better balance the competition against the industry leader, United States Steel, and would at the same time create better competitive conditions."

The Court rejected this out of hand, and concluded "if the merger offends the statute in any relevant market, then good motives and even demonstrable benefits are

irrelevant and afford no defense."

The Court: Well, that is probably true, taken generally in the context of that case, but let's take the corollary of that. Suppose that this witness says that Alcoa threatened him, do you mean to say that the Government couldn't prove that! Overruled. Certainly the motive doesn't, but the circumstances, I think, are admissible. If a company is going bankrupt, all of that is admissible, in my opinion.

Mr. Melchior: If the company is going bankrupt, yes.
The Court: That is what he is asking, are the reasons.

[fol. 1824] Mr. Melchior: I don't know what he is trying to demonstrate. It sounds as though he is trying to

demonstrate good motives.

The Court: I am sure he is not going to prove anything sinister in the whole affair.

Mr. Melchior: The Government doesn't suggest anything sinister.

The Court: Then no harm is done.

Mr. Bergson: I guess there is no need of my arguing.

The Court: No.

The Witness: Would you repeat the question?

#### By Mr. Bergson:

Q. What were Rome's reasons for entering into this transaction?

A. There were several, we as officers and directors

were trustees of our share owners' money; we were paid officers; the offer from a financial angle was a very fine one which had to be weighed very considerably in our discussions. Second, we had known the Alcoa organization and their personnel and their policies, and we liked them. We were the kind of concern-well, the founder of the company, Mr. Herbert T. Dyett said that organization was [fol. 1825] much more important than bricks and mertar, and we were very proud of our organization and we felt that our people would have an excellent opportunity in the larger organization. We were interested in the community. We felt that the people and our employees would also benefit, and when we talked with the Alcoa people that January, there was more time spent on discussing personnel and organization than there was on balance sheets and figures and things of that nature.

Q. And as a result of the acquisition were personnel transferred from Alcoa to Rome?

A. Yes.

Q. And was the responsibility for all of Alcoa's wire and cable sales placed in the Rome organization?

A. It was.

Q. This, I assume, is what you had in mind when you said it would be of benefit to the community?

A. Yes, definitely. We have had several fine people added to the community, doing an important, job, good citizens.

Q. Now, Mr. Fraser, at the time that Alcoa acquired [fol. 1826] Rome, did Rome have any plans to go into the manufacture of aluminum conduit?

A. Did you say plans?

Q. Plans.

A. No plans.

Q. Will you state your personal relationship with Mr. Sam Rea of the Rea Magnet Wire Company?

A. Mr. Sam Rea, who was president of Rea Magnet Wire Company, I knew his father very well. He was an associate in General Cable. He left General Cable to set up Rea Magnet Wire Company in Fort Wayne. When he died, Sam came to me at different times to discuss his personal problems as head of the company and it was just a—well, I was a bit older than he was and he would like to come and talk over his problems with me.

Q. Did he ask your advice in regard to possible public

offering of stock?

A. He did. He knew that I had had considerable experience in that area. Rea Magnet Wire was a family-controlled organization. He had, I think, two sisters who had heavy amounts of their estate in that, and he was interested in what the possibilities might be of making a public offering which might diversify their stock holdings or give [fol. 1827] a better market. I told him the mechanics of how to go about that. I asked him if he knew a good investment banker. He said he did. Also a good accountant. He said he did. And he carried on those investigations. The accountant submitted a figure to the investment banker the investment banker then told him what he thought he might sell the stock at. He figured what the tax payment would be on that and he decided against it.

Q. He told you about this and did he ask your further

advice as to what he should do?

A. Well, he had certain other things he was investigating, which I did not think very much about, and then I said—well, he thought something of possibly becoming associated or working with a metal company, and I suggested would he be interested if I would be able to set things up where he could, where I could inquire of Alcoa, and that was one of the companies he was thinking about, because they had a tolling arrangement. And I said I could not answer for Alcoa but I would be glad to ask whether they were at all interested. And I contacted Mr. Hickman, and then came a meeting and from there on came the merger terms and [fol. 1828] arrangements. Early in 1960 an offer was made, or the latter part of '59, I can't remember which, and their shareowners voted to accept the offer, and they became a division of Alcoa.

Q. Now, did Rea Magnet Wire make any product that

would be made either by Alcoa or Rome?

A. No. We had no overlap whatsoever. We made a heavy size of enamel and other types of magnet wire for an entirely different trade. They were not a seller of bare wire at all, and occasionally accommodation items that they made were in the fine wire size.

- Q. Now, do you recall a transaction involving the Interstate Electric Company?
  - A. Yes, I do.

Q. Can you tell us about that?

- A. Well, with recent happenings while this trial has been going on and the terrific interest in missiles, we, as a manufacturer, are making a great deal of missile cable. Our Los Angeles office advised us that a company known as Interstate Electric Company, I think their name was, were going out of business. They had equipment to make cable assemblies for the missile and instrument cable in [fol. 1829] dustry. We made an offer of a hundred and thirty thousand dollars, I think, to buy their equipment. We moved their equipment to a location adjoining our Los Angeles warehouse and have been making assemblies there for almost two years.
  - Q. These are missile assemblies?
  - A. Yes.
- Q. When did you acquire the machinery of Interstate Electric Company?
  - A. May of 1960, I think it was.
- Q. Now, Mr. Fraser, during the course of the conduct of your company's business, prior to this acquisition, did you periodically have meetings called "Whither goest thou," meetings?
  - A. Quo Vadis, yes, sir.
  - Q. And would you describe what those meetings were?
- A. Shortly after I became president in 1944, we instituted what we first started out calling an organizational audit. At these meetings we first examined the entire organization from every department in order to see how well equipped we were for the future, who were the men we had that might be promoted. At those meetings we examined [fol. 1830] certain subjects like new products, possible new equipment. A whole wide range that we sent out to the members who attended the meetings and too on the outside as subject for discussion. These were meetings where we were looking ahead in many cases five years as to where our destiny was going to be.
  - Q. Were any decisions made at those meetings?
  - A. They had no decision making power.

Q. Or when certain subjects were proposed for discussion by you, were they proposed by you evoking comment?

A. Very definitely. In many cases I purposely put them in, as I hoped that they would be acted favorably upon in order to get the reaction to be sure I was right in my judgment as far as conducting the company was concerned, but I wanted them all to express their opinion.

Q. Now, did your company also have a copper com-

mittee f

A. We had and still do. As a matter of fact, one is meeting today, what orders we have on hand, to determine what production we will have ahead for the next month and what the requirements will be.

Q. The purpose of that committee is to determine what

your needs are for raw material for copper?

[fol. 1831] A. That is correct.

Q. Did you also conduct aluminum meetings?

- A. We conducted aluminum meetings but not of this same nature. It was only that the subject was an important one. You realize as a small, closely knit organization, our executive committee meetings could be called and held just for as long as it would take Dr. Schatzel to get from the laboratory to my office. Before the meeting was over, it would be into several other important subjects that we had before us.
- Q. Did you have copper meetings on the one hand and aluminum meetings on the other hand because products made with copper or products made with aluminum were different products?

A. No, sir.

Q. Now, Mr. Fraser, during the year 1955, was there a period of an aluminum shortage?

A. Yes, sir.

Q. How long did that period last?

A. Three to six months at the most, I think we were beginning to get out of it before the six months was up.

Q. Has aluminum been in short supply since that time? [fol. 1832] A. No, sir.

Q. Have you had any problems in obtaining aluminum, did you have any problems in obtaining aluminum from 1956 to the time of your acquisition?

A. No.

Q. Now, Mr. Fraser, I show you Government's Exhibit 123, which is the Minutes of a meeting of the Executive Committee of Rome Cable Corporation, dated June 4, 1956, and I invite your attention to the next to the last paragraph and ask you to read that paragraph.

A. "Mr. J. H. Dyett was empowered to sign a proposed contract with Kaiser Aluminum for 600,000 pounds a year until 1966, subject to approval of the quality and terms by

the engineering department."

Q. Now, will you tell us what the circumstances were

surrounding that transaction?

- A. The government had asked all of the prime producers to give a figure to them indicating the amount that should be provided for their needs. The prime aluminum producers, in this case, Kaiser, whom we had just contacted within the previous five or six months to become a supplier, was one of those companies which was asked this, and they suggested a ten-year contract. It was our basic [fol. 1833] philosophy as a company not to enter into any contracts for a longer period than one year. However, after realizing this need of the Government's, and 600,000 pounds as a relative small proportion of the amount that we had expected to use, we authorized Mr. Dyett to sign such a contract, but it was never entered into.
  - Q. And this was in 1956?
  - A. Right.
- Q. Now, Mr. Fraser, since Rome's acquisition by Alcoa, have there been any discussions regarding the acquisition by Alcoa-Rome of any other wire or cable company?
  - A. Yes.
  - Q. Would you tell us what companies were involved?
- A. As I recall it, there were three, Narragansett Wire & Cable, Suprenant Manufacturing Company and Hi Temp.
  - Q. How did those discussions come about?
- A. Came about in letters which I received from different people in Pittsburgh, and they, I believe, in one case, had received a telephone call or a letter from-I don't know whether you would call him a broker, somebody who was [fol. 1834] authorized to accept offers on a company. The other two came from salesmen, as I recall it, or district managers in the field. .

Q. Were any of these discussions initiated by Aicoa alone?

A. Absolutely not.

Q. And what decision did Alcoa or Rome make in regard to each of these three?

A. Negative in each case.

Q. And why?

A. Well-

Q. (Interrupting) Take each one,

A. In one case, Narragansett Wire & Cable, they had a distinct overlap of products in the building wire industry, and we felt that there was no advantage to any addition of that line. The location of their plant was not good, and we were not interested in carrying on any further negotiations with them.

Q. And how about Hi Temp?

A. Hi Temp was an excellent little company but it also made a great many of overlap products, and their location was also in the East, and by that time there was, as I recall it, the suit instituted, and we had decided that in that [fol. 1835] event, anyway, we wouldn't go on.

Q. But the main reason for turning it down was the busi-

ness reason?

A. Absolutely.

Q. And how about Suprenant?

A. Same reasons.

Q. And there the main reason was a business reason?

A, That's right.

Q. And besides that, you were in a lawsuit and didn't want to bite off more than you could chew?

A. That's correct.

Mr. Bergson: No further questions.

The Court: Cross-examine.

#### Cross-examination.

#### By Mr. Melchior:

Q. Mr. Fraser, I would like to direct your attention to AR-70, which—

A. It isn't here—all right, I have it.

Q. Which purports to be a release by the United States

Department of Commerce; are you familiar with that document?

A. Yes, sir.

[fol. 1836] Q. I would like to ask you to turn to page 2, if you will.

A. Yes, sir.

Q. There I find listed on page 2 a number of product categories.

A. Yes.

Q. And with particular respect to the category of extruded shapes and drawn tube!

A. Yes.

Q. Could you tell me generally what products are in-

cluded in that category?

A. Well, that is an item that I don't know too much about. I know that they make extruded pipes and other shapes, but I am not at all familiar with the whole line of products.

Q. Can you name any of the products?

A. Yes. They extrude pipe for conduit, I do know that.

Q. Anything else!

- A. No, I am afraid I can't add anything to that at all. Q. You don't know whether more is included in that?
- A. I know there is more included but I can't tell you what.
- Q. I find listed extruded shapes and drawn tubes and behind that a certain number of producers in the year [fol. 1837] 1950, 59?

A. Yes.

Q. And in 1955, 110?

A. Yes.

Q. And in 1960, 133†

A. Right.

Q. Now, you are familiar with the aluminum conduit business, I take it?

A. Yes, sir.

Q. Do you know how many of those 133 companies manufacture or fabricate aluminum conduit or did in 1960?

A. I know a few of them.

Q. Would you like to name those that fabricate?

A. Alcoa, Reynolds, Kaiser, Hazelwood, American Rigid

Q. (Interrupting) Who?

A. The company that testified here, American Rigid Conduit.

Q. Aluminum Rigid Conduit?

A. Aluminum Rigid Conduit, Hazelwood, Jasco, Channel Master, Harvey, there are probably others locally from what we have heard but I couldn't identify them.

[fol. 1838] Q. You can't name any others at the moment?

A. Not at the moment.

Q. Do you think there are very many more!

A. There are some more, I don't know whether you would call them many more. There are many more who

have capabilities of doing it.

Q. I didn't ask you that, Mr. Fraser, I wanted to know how many you could name in 1960, and you have named something less than ten, and I notice there are 133 listed. Certainly there are not 133, is that right?

A. Who are making aluminum conduit?

Q. That's right.

A. I agree with that.

Q. In other words, this category must include a number of companies other than those who are engaged in making aluminum conduit or extruding pipe?

A. I would say so.

Mr. Bergson: We will concede that, and we didn't intend to show that.

#### By Mr. Melchior:

- Q. Yes. Now, directing your attention to the category wire and insulated or covered wire and cable?
  - A. Yes.

[fol. 1839] Q. Now, do you know what products are included in that category?

A. I could guess, I think, rather well.

Q. Beg pardon?

A. I think I could guess.

Q. I don't want you to guess, didn't you testify that you had been employed by the Business and Defense Services Administration?

A. Novemployed. I said I was a member of a commit-

tee.

Q. Industry Advisory Committee!

A. Yes, and it was not discussed as to the products or

scope of that.

Q. I see. So in your work with BDSA, as a member of the Industry Advisory Committee, you didn't get into these things?

A. This is during the war period, that Industry Advisory Committee was largely for advising with the industry regarding problems on appeals for the control of the control

garding problems on supply for the industry.

Q. And which war are you referring to?

A. The one that I was actually on the committee was the Korean War, and I served as an advisor to the Committee during World War II.

Q. But in that work, with that committee you didn't get

[fol. 1840] into the statistics?

A. Not these.

Q. Would you know whether this category includes products other than conductor wire and cable products?

A. I wouldn't think it would.

Q. Why do you say that?

A. I could expand this list much beyond this 47 under the

terms of wire and insulated wire and cable.

Q. I am merely asking you whether you can look at that and tell me whether that category includes producers of wire which is not conductor wire and cable, do you know that?

A. Well, do you mean—no, there should be no people included who are not producers of conductor wire and cable.

Q. Are you testifying, then, that in 1961, according to this there were 47 producers of aluminum conductor wire

and cable? That is what that seems to indicate?

A. Well, they had the list of people and that is the basis on which it would be compiled. I don't have the list of companies here in front of me. I would have to see that in [fol. 1841] order to testify accurately.

Q. Then you do not know whether this indicates 47 companies making aluminum wire and cable?

A. I do not know.

Q. Now, I believe you testified on direct examination that when Rome Cable initially went into the field of aluminum wire and cable, drawing aluminum wire and

cable, that you didn't find it necessary to buy a great deal of additional equipment?

A. Correct.

Q. You could use the equipment you had used for copper wire and cable, generally?

A. Correct.

Q. Can you tell me at the time Rome went into the business of drawing aluminum wire and cable, which is, as I recall, back around 1953, or thereabouts, how many wire drawing machines did you have, roughly?

A. We had two heavy drawing machines and I can't tell how many intermediate, very sizable number of fine wire

drawing machines.

[fol. 1842] Q. Can you give me an indication in round figures?

A. I am afraid I couldn't.

Q. You have no idea. Was it twenty?

A. Well, much less than that in the number that would be involved in the drawing of the aluminum sizes involved. I would say they might have been four or six that could have been—

Q. No. I just want to know how many wire drawing ma-

chines you had.

A. I can't remember.

Q. You mentioned two heavy ones?

A. That's right.

Q. And four or six-

A. Oh, no.

Q. I didn't hear your answer then.

A. I am afraid I can't remember.

Q. You don't remember?

A. No.

Q. What position did you hold at that time, Mr. Fraser?

A. I was president.

Q. You were president. Do you know this, Mr. Fraser, whether or not you alternated these machines as a matter [fol. 1843] of practice in drawing wire one time and aluminum another?

A. No, sir. When we first started making insulated aluminum wire we did not draw our own wire. We bought the bare conductor and insulated or stranded the conduc-

tor to the insulator.

Q. When you did begin drawing aluminum wire-

A. It was in 1953 when we converted the elevator supply machine, fixed up a dip and we began drawing. After we purchased rods we began I think it was in the first part of 1953.

- Q. Do you know how many machines you used to draw it?
  - A. One.
  - Q. Did you use this one machine?
  - A. Yes.

Q. Did you reconvert it to aluminum?

A. No. We reconverted it from a copper drawing machine to aluminum drawing machine. It was used exclusively for aluminum. But other companies in the industry—

Q. You have answered my question, Mr. Fraser. Now I believe you said you acquired a Properzi continuous casting unit in 1953.

[fol. 1844] A. Right.

Q. Why did you acquire this?

A. Well, we thought that we should, we found we could produce rod at a cheaper price than what we could buy it on the outside, and I mean as a rod it would add to our profit picture, and that was our reason.

Q. Now, I would like to direct your attention to AR-71 which purports to be a list of companies and plants pro-

ducing copper wire and cable.

. A. Yes, sir.

Q. And the date seems to be July 10, 1958, and the list apparently was prepared by the copper division of BDSA.

A. Yes, sir.

Q. Would it be very difficult for you to quickly go through that list and tell me which of those companies to your knowledge produced aluminum wire and cable? Are you familiar with the industry?

A. Well, many of them have-I mean they produced it

at different times.

Q. I am thinking of 1958 when this was prepared. I think that would be the best thing to stick to that year.

[fol. 1845] A. I could tell quite a bit of them, but I don't know that I—

Q. Could you just go through and check them off?

A. American Insulated Wire Corporation. Anaconda Wire and Cable. Belden Manufacturing Company. William Brand. Camden Wire. Central Wire.

Q. What was that? I'm sorry I didn't hear this.

A. Did you say insulated wire and cable?

Q. Aluminum.

A. I know but I should not have named Camden Wire as an insulator. Circle Wire and Cable.

Q. Circle.

A. Collyer Insulated. Continental Copper and Steel. Cornish Wire. Crescent Insulated. Crescent Company. Essex Wire. General Cable Corporation. General Electric Corporation. General Motors. Hudson Wire Company. That Kennecott Wire and Cable, that is part of Okonite, and Okonite is an insulator. Kerite. Narragansett. National Electric Products. Okonite. [fol. 1846] Q. Excuse me. Was that the same one you

referred to earlier?

A. Okonite is also a division of Kennecott and Kennecott Wire and Cable is put under Okonite.

Q. Kennecott Wire and Cable.

A. Plastic Wire and Cable. Rea Magnet Wire is here as a separate company. They do. John A. Roebling Sons were at that time. They were a division of Colorado Fuel and Iron, are now a division of, or their equipment was bought by Reynolds last year or so.

Q. Yes.

A Rockbestos. Rome Cable. Simplex Wire and Cable. Southern Electrical Corporation, which is now a part of Olin. South Wire. I am passing over some of those that I am not sure about.

Q. Yes.

A. I believe they do, but I am not sure. I am only giving you the ones that I am reasonably sure of.

Q. Yes. Sure.

A. Texas wire and Cable. That was formerly a part of Narragansett and has been sold, as Mr. Morley testified, and is a separate organization now.

[fol. 1847] Q. Do you know whether they are still in

the wire and cable business?

A. They are still in the wire and cable business.

Q. They are.

A. But whether they are making aluminum, I don't know. They have equipment, as he said. Triangle Conduit. United States Rubber is now a part or division or wholly owned by Kaiser, and they make it. United States Steel Corporation. American Steel and Wire makes it. Walker Brothers.

Q. Do you know that Walker Brothers is still in that busi-

ness!

Mr. Bergson: You asked him about 1958.

A. '58. I do not know.

Q. You don't know whether they are or not?

A. I mean because of the fact that the analysis of the profit picture, the designation of a definite year is a little harder because they might be out of it in '58 and in it in '59.

. Q. Yes.

A. I don't quite keep that close tabs.

Q. I was asking about '58, and that is what you have been

[fol. 1848] giving me, I understand.

- A. Whitney Blak. Westinghouse makes some but they do not make it for sale. It is for their own use. Western Electric also make a considerable quantity, but they do not make it for sale.
  - Q. Would you call their production captive production?

A. Western Electric! Yes.

Q. Is that the term used in the trade?

A. Yes. The same as Westinghouse. And General Motors is the same.

Q. Their production is captive?

- A. Yes. They make some, I believe, for their automotive distribution.
- Q. I see. Now, I believe you testified, Mr. Fraser, that you served in an official position in NEMA.

A. That's right, I was president last year.

Q. I beg your pardon!

A. I was president last year.

Q. Do you know when that organization was founded?

A. 1925. There was a predecessor organization, I don't quite remember the name of it, I think it was officially des[fol. 1849] ignated in 1925.

Q. Do you know-

A. Or '26.

Q. —what sort of an organization it was when it was founded?

A. Well, it was various people in the electrical industry, transformer manufacturers, motor manufacturers, appliance manufacturers, wire and cable manufacturers.

[fol. 1850] Q. Now when were you an officer, sir! About!

A. Oh, I was vice president-

Q. Just approximately?

A. Two or three years ago. I was treasurer for one or two years and I was president last year. I have been a

director for six or seven years.

Q. The reason I asked you that, I want to ask you if you were familiar with the first member of NEMA who drew aluminum wire and cable as a conductor or when the first member of that organization began drawing aluminum wire and cable? Would you know that?

A. The first member of NEMA who drew it?

Q. Yes.

A. In 1923 I think the wire members were copper drawers.

A. Yes. I could not tell you who the members of Nema were in 1925. Certainly the composition of NEMA industry has changed considerably since that time. I have no way of knowing.

Q. How about in the thirties, would you know what the membership was in the thirties, with respect to wire and

cable manufacturers?

A. No. I am more familiar with it in the forties.

Q. What was the conductor wire and cable membership in the forties, was it predominantly copper?

A. Oh yes.

[fol. 1851] Q. Was it all copper?

A. I believe that some of the companies have done some small amounts in aluminum.

Q. It was pre-dominantly copper.

A. Yes. And NEMA does not represent all of the types of wire and cable, either.

Q. I see. Do you know how many aluminum conductor wire and cable companies are members of NEMA today?

Or, let me ask you this. Are all aluminum wire and cable—conductor wire and cable companies members of NEMA?

A. No.

Q. They are not!

A. No. Because some of them can't come within the scope. For example, bare conductor and acsr conductor as such, they cannot become members of NEMA if that is the only product they make.

Q. What is the requirement?

A. Each item has a separate product scope. Weatherproof wire, producers of weatherproof wire, if they only produce weatherproof wire cannot become a member of NEMA.

Q. Is Alcoa a member of NEMA!

A. Through the fact of Rome Cable Division as we handle their products. But Alcoa as a producer of simply ascr could not have been a member of NEMA.

[fol. 1852] Q. Was Rome Cable a member prior to the

merger with Alcoa?

A. Oh yes. We have been a member from either late 30's or early 40's. It was shortly after we became a company.

Q. And Rome has continued its membership?

A. Yes.

Q. But Alcoa has not joined in it's own right?

A. No.

Q. Are you generally familiar with the statistics kept by NEMA!

A. Yes, I am.

Q. Does NEMA collect any statistics on aluminum wire and cable!

A. Yes. But it is combined into a grouping. There is a separate sub-heading under the construction wire industry or building wire and it is included in the total of building wire.

Q. It is kept separate under building wire, as aluminum?

Q. Is there any other category where they collect statistics separately? On wire and cable?

A. They are going through a transformation now. There could be something in the power cable, but it is not much.

[fol. 1853] Q. You say there is a transformation going on? What do you mean by that?

A. The Statistical Committee is continuously analyzing

the statistics or the products to see if they can get a better type of reporting that will report all categories in the industry or all the products in the industry.

Q. Does NEMA collect aluminum conduit statistics?

A. They started to. There was an aluminum conduit section—effort being made to form one oh for I think a period of six months. Our NEMA dues are based on sales. So in order to find out what the dues of these particular companies were, I believe that for a six months period the sales of I think seven companies were submitted to the Statistical Department of NEMA. But there is no regularly monthly statistics now. In sizes. Like there is in steel.

Q. Are they still collecting statistics on aluminum con-

duit to your knowledge?

A. No sir not to my knowledge.

Q. They are no longer collecting them?

A. These were not statistics. These were dollar values. When we talk about statistics in the steel these are by sizes and footages.

Q. I see.

[fol. 1854] A. To my knowledge there has never been any size information on aluminum conduit collected by NEMA.

Q. They are collected on a dollar basis, you say?

A. Just on six months. Wholly for dues.

Q. I see. Now you do have some familiarity with BDSA. I conclude from your remarks that you have some familiarity with the statistics published by BDSA. Do you know whether BDSA collects statistics on aluminum wire and cable separately from copper wire and cable?

A. They collect statistics on ACSR and on aluminum cable and they collect statistics monthly on insulated or

covered. I am familiar with those.

[fol. 1855] Q. I was interested in your testimony on the tolling arrangement between ALCOA and Rome?

A. Yes.

Q. Getting back—beginning back around 1952, you said they had some conversations with your company?

A. Right,

Q. Were you involved in those conversations?

A. I was.

Q. Did the ALCOA representatives indicate to you why

they were interested in having you work out some arrangement?

A. They did not, they did not bring up the subject, I was the one who brought up the subject to them.

Q. Did they give you any reasons why they were interested in the tolling arrangement after you brought the

subject up?

- A. They took the subject back to Pittsburgh, talked it over, and I presume one of the matters or items that they took under consideration is that we would be able to provide the material promptly, whereas they would have to buy equipment; and we had know-how, which they were willing to pay us for under their other suggestion to us. I presume that was a consideration. I wasn't a part of their discussions, I only know they accepted our proposition.
  - Q. You had know-how and they didn't; is that it?

A. As far as I know.

Q. Now, I believe Mr. Bergson asked you on direct exam-[fol. 1856] ination whether prior to the merger Rome had-I guess the term was, made or considered, made any

plans to go into the field of conduit?

A. He did, and I said we had no plans at the time of the acquisition. In keeping with past practice we had made various investigations of whether we should go into that business or not, but at the time of the acquisition we had no plans so to do.

Q. You had deliberated the matter within the company

and given consideration to it? .

A. Absolutely, that and many other subjects that we never eventuated into plans.

- Q. Then Mr. Bergson asked you about the "whither thou goest" meetings and you indicated these were general discussions meetings, that no decisions were ever made there?
- A. No decisions could be made; there were recommendations made.
  - Q. Were recommendations made by this group!
  - A. Recommendations could be made by this group.
- Q. As a matter of fact, were recommendations ever made-well, let me ask you this, Mr. Fraser, if recom-

mendations would have been made, who would they have been made to?

A. They would have been made to the Executive Committee, and the Executive Committee would have—and possibly would have gone to the Board of Directors, depending on what it was.

Q. Were any members of the Executive Committee and Board of Directors in these "whither goest thou" meet-

[fol. 1857] ings?

A. Yes, sir.

Q. Would you identify anybody who was in those meet-

ings at that time?

A. The Executive Vice President; Vice President in charge of Engineering, Marketing, Manufacturing, Sales Manager, Treasurer—I think that covers it—and Secretary—no, the Secretary was not a member of the Executive Committee and we also added the Comptroller and Counsel.

Q. In other words, you had a goodly number of the members of the Executive Committee and the Board of Direc-

tors attending these meetings then, didn't you?

A. That's right, but no decisions.

Q. Now, you also were asked about aluminum meetings?

A. Yes, sir.

Q. What did you discuss at the aluminum meetings in general?

A. Whether we should buy a Properzi machine; how we should go about getting into that particular type of business. When we first started out we thought we would have to buy a special drawing machine and that is where the \$336,000 came into being, because at that time in our discussions we felt that we should have an aluminum drawing machine, a new one. Later investigation, some months later, some more aluminum meetings later, we found that we could get by by getting a new copper Vaughn drawing machine and convert the elevator supply machine into an [fol. 1858] aluminum drawing, because that had sufficient capacity to meet our needs.

Q. Is it fair to say your aluminum meetings generally concerned aluminum directly or indirectly, is that a fair

statement?

A. That's correct, but I could also produce minutes where we were talking sometimes about new insulating materials.

Q. Would insulating materials relate directly or indi-

rectly to aluminum?

A. These type meetings were just called aluminum meetings; every week we run through the whole gamut of our whole product line.

Q. You insulated aluminum wire and cable, didn't you?

A. Yes, sir.

Q. Now, you were asked about other merger discussions and you mentioned specifically that you had discussions or your company had discussions with Narragansett Wire and Cable, Suprenant and Hi-Temp?

. A. I did not say we had discussions. I said that I received a letter or letters, because there were three separate ones, or possibly more, concerning these individual

companies.

Q. Well-

A. (Interrupting) The information had come to Pittsburgh, I couldn't even identify from what particular sources, in one case I did know that the Boston district manager had one of his customers with Suprenont and he [fol. 1859] indicated to him that he might like to sell his company. I can't remember how Hi-Temp came into the picture. Narragansett came in from somebody who was authorized to find a buyer for the company. I don't know who he was.

Q. I was interested in Narragansett specifically; I didn't mean to go into the other two. I believe you did make some statement you gave some consideration to Narragansett?

A. I did not-pardon me.

Q. I think you said you gave some consideration to their product line and their plant location?

A. We did that in all three, looking at them.

Q. What did you say about Narragansett?

A. I said we were not interested in their particular type of operation. They made largely building wire. We had capacity for making plenty of building wire. We didn't like their method of distributing their products, let's say, some of their policies, and we were not interested.

Q. You were not interested in Narragansett's product line because it overlapped yours?

A. That was one reason.

Q. If their product line had not overlapped yours may you have been interested from a product line standpoint?

- A. I think that is begging the question. Each company [fol. 1860] would naturally be considered from its own merits if we were interested in acquiring, which we were not.
- Q. I have one more question, Mr. Fraser, and I approach this with fear and trepidition.

A. How shall I feel?

Q. I am approaching it as a layman to an expert in the field. This is a question I asked Mr. Day this morning and Mr. Day apparently didn't know any more about it than I do, and this relates to the question of copper equivalent. I would like to get something on the record and I am sure you can explain it properly. If you could tell us in language—layman's language. I believe you did testify on direct examination—well, would you state it again so I don't misquote you! I think it would be better if you would state it. What does copper equivalent mean—then I will ask the question.

A. Well, a pound of copper, or, rather, it takes three pounds of copper to produce the same footage as one pound

of aluminum.

Q. Three pounds of copper to produce the same footage?

A. That's right.

Q. As aluminum. Now when you say footage, do you mean on the basis of conductivity?

A. No, sir.

Q. Well, now, could you give me that rule of thumb on the basis of conductivity? In other words, I have a particular [fol. 1861] electrical job to do and let's take, for example, number two aluminum wire, I want to run number two aluminum wire; now what would be the copper counterpart?

A. Four.

Q. Number four copper counterpart?

A. Yes.

Q. Now, could you give me an indication how much cop-

per and how much aluminum I would need to do the job, for instance; on the basis of a thousand feet?

A. I don't have those tables right with me.

Q. If we give you the Rome Cable handbook could you use that?

A. Yes—it's been a long time since I have had to deal with these.

Q. I didn't mean to embarrass you, I thought that was something easy.

A. It used to be when I was in the production end of

things.

Q. It is not easy for me and I thought I would use this as an opportunity to get it. I would have asked Mr. Schatzel except it didn't occur to me.

The Court: If it can be more accurate by Mr. Schatzel, I will permit you to ask him.

Mr. Bergson: That is perfectly all right.

The Court: No use of us guessing at it.

The Witness: I think I can give you that.

### [fol. 1862] By Mr. Melchior:

Q. We looked it up last night and we found it very quickly, so I am sure you can. A thousand feet of number two aluminum weighs how much?

A. Just a minute until I find the aluminum item in here

-what size?

Q. A thousand feet of number two aluminum?

A. 61 lbs.

Q. For a thousand feet of number two aluminum?

A. Right.

Q. Now how about its counterpart, number four copper in a thousand feet, what would that weight?

A. Four, you said?

Q. Yes, sir; that is the counterpart, isn't it?

A. Yes, sir; 126 lbs.

Q. So what would the ratio be, would it be one pound of aluminum to two pounds of copper?

A. What did I give you on the other?

Q. 61 lbs. you said for number two aluminum and 126 lbs. for number four copper.

A. That's correct.

Q. It is roughly two to one, rather than three to one, isn't it?

A. For weight, but then when you get into the equivalent size—well, I am just guessing, it is a little over three.

Mr. Bergson: I would be perfectly willing to have Mr. Schatzel come back on the stand and explain it if you would like to have it explained.

Mr. Melchior: You qualified Mr. Fraser as an expert and

I am willing to accept his judgment.

Mr. Bergson: As an expert in the electrical industry.

# By Mr. Melchior:

Q. You agree with the Rome handbook it takes twice as much copper from a conductivity standpoint as it does aluminum?

A. I would prefer not to answer that question put in that

particular way. The gauges say that.

Q. The gauges say that?

A. The handbook.

Mr. Melchior: That's all we have to go by. Thank you, Mr. Fraser.

The Court: Recess until Tuesday morning. Court will recess until tomorrow morning at 10:00 o'clock.

(Thereupon, at 5:10 p.m. a recess was taken in the above action to Tuesday, February 27, 1962, at 10:00 a.m.)